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Summaries of
Decisions
Volume 1

Liquor Licence Appeal Tribunal



Ontario

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LIQUOR LICENCE APPEAL TRIBUNAL

Chairman: John Yaremko, Q.C.

Members: John W. Erickson
Jack C. Sim
Barbara J. Shand

Registrar: Audrey Verge

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Summaries of
Decisions

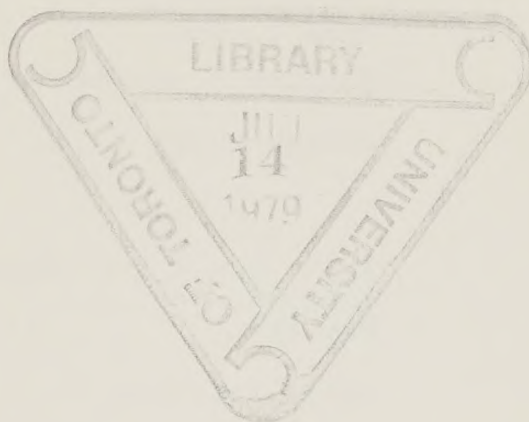
Volume 1



LIQUOR LICENCE APPEAL TRIBUNAL

SUMMARIES OF DECISIONS* - VOLUME 1

Cited 1 L.L.A.T.



*This volume contains summaries of,
and in some instances full decisions
and reasons given.
If reference to the exact decision or
a copy of this volume is desired
application should be made to the
Registrar.

LIQUOR LICENCE APPEAL TRIBUNAL

INDEX

SUMMARIES OF
DECISIONS

VOLUME 1

<u>Name of Establishment</u>	<u>Appeal from</u>	<u>Page</u>
Cecil Tavern	Suspension	39
Diplomat Tavern	Terms and Conditions	31
Kingsway Hotel	Suspension	64
Leaside Restaurant	Refusal to issue Licence	1
Lincoln Park Inn	Suspension	55
Neill-Wycik College Inc.	Refusal to issue Permit	16
Oasis Steak House Tavern	Suspension	83
Oxford Hotel #1	Suspension	23
Oxford Hotel #2	Terms and Conditions	27
Richelieu Hotel	Suspension	11
Stafford Hotel	Suspension	77
Uptown Motor Hotel	Refusal to approve Transfer	36
Willow Bay Restaurant	Refusal to issue Licence	70

LIQUOR LICENCE APPEAL TRIBUNAL

CROSS INDEX TO VOLUME 1

<u>Licensee or Applicant</u>	<u>Page</u>
Chelsea Hotels Ltd. (Lincoln Park Inn)	55
Cvetkovic, Ivan; Cvetkovic, Joseph (Cecil Tavern)	39
Danmax Corporation of Canada Ltd. #1 (Oxford Hotel #1)	23
Danmax Corporation of Canada Ltd. #2 (Oxford Hotel #2)	27
Galiotos, Steve (Diplomat Tavern)	31
J & P Hotel Holdings (Toronto) Ltd. (Stafford Hotel)	77
Kertsanis, Bill; Kertanis, Danny (Leaside Restaurant)	1
Mike Goyda Enterprises Limited (Uptown Motor Hotel)	36
Mollo, Angelo (Willow Bay Restaurant)	70
Nick & John Holdings Ltd. (Kingsway Hotel)	64
Procopos, Jim (Diplomat Tavern)	31
St. Pierre, Raynald (Richelieu Hotel)	11
Siropoulos, Jim (Diplomat Tavern)	31
Zabian, Hessien F. (Oasis Steak House Tavern)	83

LEASIDE RESTAURANT, East York

Application for a Dining Lounge Licence
by Bill Kertsanis and Danny Kertsanis
APPEAL FROM REFUSAL TO ISSUE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON and
JACK C. SIM, MEMBERS

COUNSEL: S. B. STEIN representing the applicants
S. A. GRANNUM representing The Liquor Licence Board

DECISION: 3 June, 1976

Messrs Bill Kertsanis and Danny Kertsanis, the applicants, have carried on the business of a restaurant since 1961 in the Borough of East York in the Municipality of Metropolitan Toronto at 188 Laird Drive - a site that has been used as a restaurant since approximately 1940.

The premises are situate on the west side of Laird Drive which is a significant thoroughfare, heavily travelled traffic artery, and a dividing line in the area. On the east side of Laird Drive, opposite the premises and continuing some distance east is a built-up substantial industrial complex which appears to comprise the major industrial area in the whole of the Borough of East York. The west side of Laird Drive is lined its length with a strip of mixed commercial and industrial activity. The premises are at a hub of the total industrial and commercial activity. Immediately to the west of the strip is a residential area. There are no schools, churches, funeral homes, hospitals, or nursing homes in the immediate vicinity.

During the day there is a large influx of workers into the commercial and industrial premises from throughout the Borough and Metropolitan Toronto, e.g. 1000 for only 2 employers. Though there is public transportation along Laird Drive many of the workers utilize automobiles to get to work. They park in employer lots and along the streets in the industrial and nearby residential area.

Until recently the restaurant opened at 6 a.m. and closed at 7 p.m. The restaurant caters mainly in the day-time hours to workers on various shifts and to residents nearby; 75% of the business is at lunch time.

In October, 1975, the applicants enlarged and renovated the subject premises at an approximate cost of \$140,000 doubling their capacity from 70 places to 140 places. After the renovation the restaurant was kept open to 10 p.m. (recently reverting to 8 p.m.) The restaurant began to be used by executives from the nearby corporations to extend hospitality to visitors. It also began to get a few patrons in the evening from nearby and elsewhere in the Metro area, as well as overtime workers.

Prompted by the fact that a close competitor had been licensed and by requests by patrons, the Applicants formally applied to the Liquor Licence Board for a Dining Lounge Licence. They were agreeable to a 10 p.m. limitation and no entertainment.

On the 5th of February, 1976, the Board held a hearing for the residents of the Municipality of East York to make representations to the Board concerning the application. Notice of the meeting was published in accordance with the Statute, in the Toronto Star.

In conjunction with this hearing the Board received 2 petitions containing more than 200 signatures in opposition to the granting of a liquor licence. Some 39 (including many of the signatories) also wrote individual letters of objection. Some 20 persons, most of whom had signed the petition and/or letters appeared personally on behalf of themselves and others.

It is to be noted that some persons, in addition to all these actions of protest had attended an indirectly related Committee of Adjustment meeting earlier and also attended the subsequent meeting of the Board and this current Tribunal hearing. These actions are indicative of the seriousness with which the concerned citizens treated the matter. The petitions and letter show clearly that the residents of the households immediately close by the premises were overwhelmingly opposed to the granting of the licence.

Representation was made opposing the application on behalf of The Leaside Property Owners Association of some 2,000 members.

Aldermen of Ward 4 attended the hearings to express opposition on behalf of members of the public present and others. We accept the position that they are acting as representatives of the residential area in the ward directly affected.

There were filed 2 (similar) resolutions by the Council of the Borough of East York endorsing a resolution of the Development Committee opposing the granting of the licence.

We interpret the actions of the Council of East York, the representative of the Property Owners Association, and the Aldermen of Ward 4 not as representations on behalf of the total municipality in the case of the Council, nor of the total membership in the case of the Property Owners' Association, nor of all the ratepayers in Ward 4 in the case of the representations of the Alderman, but as reflecting support for the position of the immediate area residents.

The Applicants filed with the Board a petition of approximately 480 persons favouring their application for a licence. An examination of this petition discloses only a handful of residents from the area, the remainder being persons employed in the immediate vicinity, i.e. workers in the industrial and commercial area referred to herein, and residing to some degree throughout the Municipality of East York but in the main, throughout the Municipality of Metropolitan Toronto.

The Applicants were notified that in accordance with Section 12 of the Liquor Licence Act the Board proposed to refuse to issue the Dining Room Licence as "not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located".

The Applicants requested a hearing under the Act. Again at this hearing the Board heard the Applicants, their solicitor, and several persons who opposed the licence. Subsequent to the hearing by decision dated the 26th day of March, 1976, the Board denied the application for a Dining Lounge Licence by the Appellants. The decision was based (to quote Mr. Rice) "on the fact that there was not sufficient evidence provided the Liquor Licence Board at the subsequent hearing that would assist us in making any change in our previous decision".

The petitions and letters presented at the hearing of 2 February and 25th of March, 1976, form part of the record. The testimony of Mr. John Judges, Mr. Eber Rice, and Mrs. Carol Fripp, Mr. Robert A. Hodgson, and the Applicant, Danny Kertsanis confirmed what had been presented to the Board at the meetings on the 5th of February and the 25th of March.

At the hearing of the Tribunal, counsel for the Applicants presented 4 varied letters in support of the application, and a petition of 485 names supporting the application. In the instance of this petition the names were those of patrons, workers in the vicinity, and of a substantial number of residents from just outside the immediate residential area (but it is to be noted that a goodly number

are within that area outlined on behalf of the Property Owners Association as being concerned with local traffic and parking conditions). He also tendered an agreement between the Applicants and Admiral Leasing respecting certain evening parking arrangements for some 27 cars.

The wording of the Statute - The Liquor Licence Act (in Section 6) clearly indicates that there is an entitlement to a licence, i.e. an Applicant is to be entitled to be issued a licence unless he falls within certain exceptions.

In this case the Applicants' entitlement was not found adversely affected by the provisions of Paragraphs (a) to (f) of Subsection 1 of Section 6. During the period of operation by the Applicants nothing appears that is negative to them either in business or personally; indeed, the operation of the restaurant business, their financial affairs with respect thereto, and their personal conduct and character has received favourable comment. They are "of good integrity and hard working"... "responsible"... "clean, respectable and hospitable". In the record there is a report dated the 28th day of January, 1976, by one Edward Chalmers, an inspector with the Liquor Licence Board. His relevant comments and assessment of the application include the following phrases: "have renovated...into a first-class operation...this particular establishment is recognised as a first-class operation...operates in an above-average operation...with excellent surroundings. All facilities operable and in first-class condition". In addition there is his expressed opinion, "This is an excellent area for a licenced premises and the writer foresees no problems in the area". This report was adopted as being factual by Mr. John Judges, a licencing officer, and the Chairman of the Board, Mr. Eber Rice.

What is at issue is the exception to entitlement set out in Paragraph (g) "where the issuance of the licence is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located". It is a matter of judgement for the Board to determine what is 'in the public interest' and the basis of this is a "regard" by the Board "to the needs and wishes of the public in the municipality". This determination is not an easy one.

By a vote held in 1969 the voters of the whole of the Borough of East York expressed themselves in favour of the sale of liquor under a dining lounge licence for consumption with meals on licenced premises by a vote of 17,862 to 6,405 out of an electorate of 68,792. This is not however the expression of needs and wishes referred to in Paragraph (g) and it is incumbent upon the Board to have regard to the needs and wishes of the public in the municipality in respect of each individual application.

Since there is no machinery available under the Act for a scientific determination of needs and wishes, the Board can only proceed on the material which is placed before it. In addition to the oral observations of persons, the Board has heard those directly affected and their representatives. The Board has also resorted to the receipt of letters, petitions, and resolutions by the Council of the Municipality. The Tribunal has emulated the Board and also accepted the same presentation. We believe it to be necessary to do so as the fullest and convenient method of citizen input. A mere count of names to arrive at a majority is not the proper course. There must be an awareness of the shortcomings of petitions; an examination shows that some (albeit small in number) signed contradictory petitions and others withdrew names from a petition upon a better understanding and second thought.

Upon consideration of the needs and wishes of the persons who communicated the same to the Board as above, the Board came to the conclusion that the issuance of the licence was not in the public interest. Its decision was based on the objections and opposition of the various persons who communicated such to the Board.

It is clear that the objection and opposition expressed to the issuance of a liquor licence was based upon concern over local traffic and parking problems. The position is succinctly expressed in the notice delivered to certain residents after the Appellants circularized a petition enlisting support in favour of the issuance, after the Board's refusal of March 26th.

"We have not objected to the granting of the liquor licence, we have objected on the grounds that the cars necessary for the seating capacity of about 150 persons must create a nuisance and a safety hazard in the vicinity of Parkhurst Blvd., Randolph Road, Sutherland Drive, Parkview Drive, and Vanderhoof Avenue".

The latter are the residential streets immediate to the restaurant premises. Alderman Redway referred to..."a concern that is primarily based on ...worries about parking problems that would be evident in the residential area adjoining the location if a licence is granted". The focus of concern to the residents was fully put forth by Mr. Hodgson, an immediate resident. He stated that the residents in his area "really haven't any objection to the Liquor Board or liquor licence outside of the fact of the parking during the evening ...to stay open until 10 o'clock definitely there are going to be parking problems on the street, of which (they) have enough now".

There was concern for the safety of children primarily. Getting in and out of driveways would be a problem because when the people come to the restaurant they are likely to park where it is convenient, i.e. on the street.

Some 19 immediate residents appeared at the Tribunal hearing and all without exception joined in the concern about the parking.

It is clear that this concern is well founded. There is a major parking problem in the area which has worsened from 1947 to the present. The parking problem within the residential area in the main is a spillover from the industrial area in the great majority of cases as a result of the large influx of workers with their cars into the area by day.

The difficulties caused by their presence is compounded by the shortage of planned parking areas attached to the industries and commercial undertakings, and further compounded by the preference of persons to park in the residential streets. Permissible street parking on the thoroughfares such as Laird Drive is nil.

The difficulties created are those encountered in many congested urban areas. It was stated that enforcement is minimal. Residents believe that the police take the position that there is not sufficient space in the industrial area for parking and therefore they don't see the point of enforcing it as often as they might.

We note several facets of the parking problem from the point of view of the Appellants. It is clear that the major problems of the daytime are generated by the industrial properties and not by the restaurant. It is not the presence of the restaurant that creates the traffic or the parking problem. A small percentage of the customers come by car.

If the patrons' cars are parked in the residential area they are there not by reason of the drivers' attendance at the restaurant but by reason of attendance at employment. The cars would be parked there even if there were no restaurant. No specific evidence was given which would indicate that in fact there would be any appreciable increase in traffic and parking problems during the daytime if the licence were granted. The assumption is that ordinarily the granting of a liquor licence is an attraction of business and that therefore as a result one would anticipate a greater degree of traffic to the licenced area. There was nothing to prove that this assumption would apply in the daytime in this instance. On the other hand one can understand concern of residents that a licence would increase business in the evening and that there would be increased evening parking because of more people driving into the area to patronize the licenced establishment. Whether this would in fact develop to an appreciable degree is debatable, but the concern is real. Evening parking in the area takes place by virtue of the 24-hour operation of the industries such as Canada Wire & Cable. The residents were concerned that the heavy parking in the daytime which eases in the evening would be extended to 10 p.m. if a licence were issued.

There is no legal requirement upon the Appellants to provide additional parking for they are exempt from the zoning bylaw passed on the 21st of October, 1963, by the Town of Leaside. However, one cannot quarrel with the position taken since 1972 by the residents who are not in approval of new development which could increase the problem and make it worse.

The Appellants have entered into an agreement with Admiral Auto Leasing (134 Laird Drive) for parking to be available to their patrons in the evening. The 27 spaces with their own 8 would meet the requirements of the bylaw which is not applicable to them, but these arrangements have not been convincing to the residents in the immediate area, and did not dispel their objections based on their concern about the increase in traffic in the evening after close of the business hours generally in the area.

The sincerity of the concern about traffic and parking in the residential area is evidenced in that many of the people who live in the area immediately west of Laird Drive have requested a complete parking prohibition on all residential streets off Laird Drive south of Eglinton Avenue between 8 a.m. and 6 p.m.

The adoption of this recommendation would mean a personal inconvenience to those proposing it.

Mr. Stein made a considerable argument that the wishes of the public as assessed must be related to the kinds of issues set out in Section 6, Sub-section 1, Paragraphs (a) to (f), not to issues that are extraneous, and his position was that parking is an extraneous matter. Mr. Rice has clearly indicated that the application was not rejected on the grounds of parking, for if there had been no objections by the public, the Board would not have denied the application on the grounds of an insufficiency of parking. He made it clear that the Board would not deny licences based on matters that are the responsibility of the municipality. We find that the Board rejected the application on the grounds off "not in the public interest having regard to the needs and wishes of the public". That the Board assessed the wishes of the public in the light of their views on the parking problems is not an error on the part of the Board.

It is to be noted that under Paragraph (g) in determining the public interest, regard is to be had to both 'needs' and 'wishes' and weight must be given to each of these factors. Consideration cannot be restricted to that of "needs" or "wishes" alone, nor to either of these matters from the point of view of one particular group.

Under Section 6 (1) (g) there is also the question of what is the public. Is it the public in the Borough of East York, and is the particular public which is to be considered merely that part resident in the immediate vicinity of the premises applied for? Mr. Rice indicated that he believed it to be the public in Metropolitan Toronto in that, as he understood it, anyone in Metropolitan Toronto can raise an objection to the issuance of a licence. However he did state that they took specific cognizance of the people in the Borough. Though Mr. Rice in reference to the February 5th meeting stated the purpose of the hearing is to give the representatives of the community an opportunity of making representations to the Board concerning the application, he later clarified that he regarded there is little difference in the terminology community and municipality.

The wishes expressed of that part of the public in the municipality resident in the immediate area are clear: they are negative wishes based upon the traffic problem generally and the parking problems in particular within the area, with the concomitant concern regarding the danger of accident and fire, and noise. This negative attitude can also be interpreted as being an expression of a need for convenience, safety, and quiet.

There are also the clear needs of that part of the public who work within the municipality to earn their livelihood and to make their contribution to the industry and commerce nearby, and their wishes to have alcoholic beverage with their food. The petition in this regard before the Board is lengthy.

There is clearly a need for restaurant facilities to provide service to the large number of workers in the immediate area; this would be self-evident as demonstrated by the fact that it has been found profitable for someone to render this service. That the Appellants' restaurant has been in operation for some 35 years clearly indicates that it has fulfilled a need as expressed by the clientele who patronize it, some for years. It has provided a good community service.

In contemporary times in the matter of dining out it is "customarily acceptable in our society today to be able to enjoy a drink with your dinner" states one supporter. Those in opposition to the granting of the licence have in no way questioned the needs in this regard. The only licenced facility in the immediate area is Steve's Tavern at 120 Laird Drive, a half mile south of the premises and towards the southerly end of the industrial area. There is the Leaside Village Restaurant 1 mile south and across a set of railway tracks (at Laird Drive and Millwood) which is a specialized type of premises intended to draw from the entire city. Some distance away from the immediate area there are in the neighbouring Borough of North York the Laird Drive Restaurant (834 Eglinton Ave. East) away from the north-west corner of the industrial area, and still to the west thereof Sunnybrook Plaza Restaurant (660 Eglinton Avenue East). The existence of these named premises and the others further away do not lessen the needs fulfilled by the Appellants' premises in respect of the workers in the area.

The question resolves itself into a determination of whether the needs and wishes of those (immediate residents) opposed to the issuance of the licence should be considered as being either greater, or to be given more weight than the needs and wishes of those who favour the issuance (workers in the area). The Liquor Licence Board in the consideration of an issuance of a licence must make a choice, that of granting a full licence or none at all. It is clear that the Board placed the emphasis on the needs and wishes of the immediate residents to determine the public interest and decided accordingly.

The Tribunal by virtue of Sec. 15 (4) is enabled to attach terms and conditions to a licence upon issuance. It is in a position to take a balanced point of view to give effect thereto.

The Tribunal is thus enabled and hereby does decide that in the public interest, what may be termed a limited licence should issue. That licence should meet the needs and wishes of the workers--that of enjoying the amenities of dining in a first-class restaurant. It should also meet the needs and wishes of the immediate residents; and their concern about the possibility of increased parking problems after regular closing hours will be given effect to.

The Liquor Licence Appeal Tribunal hereby directs the Liquor Licence Board to issue a Dining Lounge Licence to the Appellants with the following terms and conditions attached to the licence, namely:

1. Liquor of the type authorized to be sold and served by this licence may be sold and served in the premises located at 188-190 Laird Drive in the Borough of East York between the hours of 12 noon and 7 p.m. on each of the days, Monday, to Friday, and between the hours of 12 noon and 3 p.m. on Saturdays.
2. A sign (to be approved by the Board as to format and location) setting out the hours in which liquor is sold and served in the establishment shall be displayed on the premises.
3. The licensees shall not lease any part of the premises for special occasion permits.
4. The licensees shall not have any application for a removal of any term or condition herein considered by the Liquor Licence Board before the 10th day of May, 1977.
5. The licensees shall within 10 days of filing any application referred to in Paragraph 4 give notice thereof to the Leaside Property Owners Association and file proof thereof with the Board before consideration by it of the said application
6. The licensees shall in respect of any application referred to in Paragraph 4 agree to the following:
that the Liquor Licence Board in respect of such application shall advertise the fact of the application, the nature of the application, and the location of the premises, at least twice in a newspaper having general circulation in the Borough of East York, and shall fix in the advertisement the time and place in the Borough for the residents of the Borough and any other interested persons to make representations to the Board concerning the application.

RICHELIEU HOTEL, Ottawa

Dining Lounge Licence and Lounge Licence
issued to
Raynald St. Pierre
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON and
JACK C. SIM, MEMBERS

COUNSEL: LEONARD M. SHORE representing the Licensee
S. A. GRANNUM representing The Liquor Licence Board

DECISION: 20 September, 1976

Raynald St. Pierre is a licensee in respect of the establishment known as the Richelieu Hotel, Ottawa, there being issued to him a Dining Lounge Licence and a Lounge Licence. Mr. Raynald St. Pierre became licensee in February, 1975, having acted as daytime Manager and Bookkeeper of that hotel for approximately a year prior.

The Hotel has three floors, the 2nd and 3rd having 17 rooms for guests. All but 2 rooms, #12 and #14, are rented on a monthly or weekly basis.

The Ottawa Police entered the premises on May 3, 1975, and as a result thereof, convictions were subsequently registered on charges against:

Denis St. Pierre - (night manager, brother of the licensee)

Claude Larose - (waiter in the dining lounge)

Gilles Sabourin - (maintenance man)

that they, between the 1st of November, 1974 and the 3rd of May, 1975, were keepers of a common bawdy house located at 62 York Street in the City of Ottawa contrary to Section 193 (1) of the Criminal Code.

Messrs Denis St. Pierre, Claude Larose, and Gilles Sabourin pleaded guilty to the charge and were fined \$300 or, alternatively 30 days in custody.

The evidence at the trial of Denis St. Pierre and Gilles Sabourin indicated that only two rooms in the hotel, namely #12 and #14, were the subject matter of the charges.

Mr. Raynald St. Pierre took no action in respect of the said employees until the convictions were registered at which time he dismissed Gilles Sabourin and Denis St. Pierre. The employment of Claude Larose was continued in daytime employment until nine months later when he was dismissed. Earlier he had been working nights.

The Liquor Licence Board issued a Notice of Proposal under Sec. 12 of the Liquor Licence Act on the 5th day of May, 1976 to suspend the licences for 14 days and after a hearing requested on the 3rd of June, 1976, suspended the licenses for a period of 7 days.

The Tribunal confirms that the facts are as placed before the Board and the Tribunal, and there was no dispute that the conviction referred to hereinafter respecting a fire-arm is under an appeal and on consideration was given to the same. The language of the Liquor Licence Board in dealing with the matter is various. The Notice of Proposal gave the following reason for the proposal to suspend pursuant to Section 12.

"The past conduct of the licensee affords reasonable grounds for belief that he has not carried on business in accordance with the law and with integrity and honesty.

Particulars of the said allegations are that in 1976, certain employees of the licensee namely, Denis St. Pierre, Claude Larose, and Gilles Sabourin were convicted of keeping a Common Bawdy House, contrary to the Criminal Code and the licensee knew or ought to have known of the said illegal activities being carried on by his employees.

The said licensee was convicted of unlawful possession of an unregistered firearm".

A transcript of the oral decision conveyed by Mr. E. J. Rice, Chairman, on behalf of the Board at conclusion of the hearing with reference to the decision to suspend relates to the following:

"It is the opinion of this Board that Licensees do have a responsibility for the conduct of their employees. While Mr. St. Pierre did take over the Hotel in February, 1975, it was under his management for approximately a year prior to that date; further, after a conviction of one employee, the employment of that party did not terminate for approximately nine (9) months".

The final written Decision of the Board was a finding:

"Under Section 11, Subsection 3 of the Liquor Licence Act 1975....that the past conduct of the licensee has been in contravention of the Act and Regulations appurtenant thereto in that certain employees of the Licensee were convicted of keeping a Common Bawdy House, contrary to the Criminal Code, and the Licensee knew, or ought to have known of the said illegal activities being carried on by his employees".

Counsel on behalf of Mr. Raynald St. Pierre argued that the proposal was not valid under the Act since it was couched in the past tense, and that it followed that the suspension pursuant to the proposal was accordingly not valid under the Act. The Tribunal finds that the licensee was not prejudiced by the wording of the Notice of Proposal nor by the oral and written decisions, and that he has had the fullest opportunity of replying to the proposal, and stating his case.

The relevant powers of the Board are set out in the Liquor Licence Act under Section 11 (3). The Legislature has been explicit in respect of the powers of the Board (and the tribunal) in respect to suspension:

"The Board may suspend....a licence issued under Section 6 for any reason that would disentitle the licensee to a licence under Section 6 if he were an applicant or where the licensee is in breach of a term or condition of the licence".

It is clear that the licensee was not in breach of a term or condition of the licence. Accordingly, if there is a power of suspension with respect to the instant situation it must be within Section 6.

The Board under the Act should have proceeded on the assumption that the hearing was for a licence and determined whether on the facts there would have been a disentitlement by the licensee if he were an applicant for the licence.

The Board in its written decision found "that the past conduct of the licensee has been in contravention of the Act and the Regulations appurtenant thereto in that certain employees of the licensee were convicted of keeping a Common Bawdy House, contrary to the Criminal Code, and the licensee knew, or ought to have known, of the said illegal activities being carried on by his employees...."

The Tribunal has concluded that there is nothing in the Liquor Licence Act or Regulations which is contravened by the registration of the convictions referred to herein.

The Tribunal finds that there were no activities on the part of the Appellant in contravention of the Act or Regulations, and that the Board could not - if it so purported to do - proceed by virtue of Section 6 (1) (e).

The Tribunal finds, however, that the Board could have proceeded under Section 6 (1) (d) a reference to which was made by counsel for the Board during the Board's hearing.

The Tribunal finds that there was no evidence that the licensee knew of the said activities or that he was willfully blind to or that he connived at or abetted the activity. Indeed, a charge of knowingly permitting the premises to be used as a common bawdy house was withdrawn.

Taking into consideration the small size of the hotel and the disruption of the carrying on of business that could have followed, the Tribunal does not fault the licensee for not having taken action immediately. The Tribunal accepts his word that he continued the employment of Gilles Sabourin (under his supervision) out of a sense of kindness.

However, the Tribunal shares the opinion of the Board which stated the view "that the licensee ought to have known of the illegal activities carried on by his employees".

The charges related to a substantial period of time, 1 November, 1974 - 3 May, 1975, a half year. Though the local liquor inspector did testify that there was no way of discerning whether prostitutes were among the patrons, the Tribunal is of the opinion that as licensee he should have checked the hotel at appropriate times (as he subsequently did) to ensure that no improper activities were being carried on. The hotel is not that large - indeed - there were only two rooms to be concerned about. The licensee had entrusted the affairs of the hotel to the night manager and others, and accordingly, cannot claim to be free of the results of their action, having taken no positive steps which a prudent and knowledgeable proprietor of a hotel should have taken. It is noted that the licensee had also been manager for some time during the relevant period. Carrying on business in accordance with law and integrity and honesty includes the management of a hotel in keeping with the standards we have noted.

The Tribunal is proceeding under its jurisdiction under Section 15 which enables it to come to a decision on its own, based on the facts before it. The Tribunal sees its role as not merely reviewing the action of the Board to determine if there has been an error; the Tribunal has interpreted its powers also to include that of making an independent determination.

Accordingly, the Tribunal finds that the Appellant would be disentitled to a licence upon the statement of facts as in the instant case. The Tribunal finds that had the licensee been currently an applicant, under the circumstances of his management of this hotel, his entitlement to a licence would have been negated in that "past conduct of the applicant affords reasonable grounds for belief that he will not carry on business in accordance with the law and integrity and honesty". It follows that a suspension of a licence under such such circumstances is valid under the Act, and accordingly, the the Liquor Licence Appeal Tribunal confirms the Order of Suspension of the Board

The Liquor Licence Appeal Tribunal hereby directs the Liquor Licence Board to establish the exact period of suspension.

NEILL-WYCIK COLLEGE INC., Toronto

Application for Special Occasion Permit
APPEAL FROM REFUSAL TO ISSUE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON and
JACK C. SIM, MEMBERS

COUNSEL: PAUL COPELAND representing the Applicant
S. A. GRANNUM representing The Liquor Licence Board

DECISION: 8 October, 1976

Neill-Wycik College Inc. was incorporated on the 24th day of July, 1968 under The Corporations Act of Ontario.

(a) To promote the advancement of learning and the dissemination of knowledge,

(b) To promote the intellectual, social, moral, and physical development of its members and the betterment of society,

(c) To establish and carry on scholarship and research programs,

(d) To establish and maintain a library,

(e) To develop and conduct seminars, lectures, and correspondence courses and to publish a journal and such other scholarly material as shall be relevant to the educational purposes of the college, but no academic credits shall be given by the College with regard to participation in any such activities.

(f) To construct, maintain and operate a building for the College to provide dwelling accommodation and meals for the members of the College and otherwise complementing the functions of post secondary institutions of learning and co-operating therewith to the end that the members of the College will receive a wider and fuller education than would otherwise be possible.

The Corporation is to be carried on without the purpose of gain for its members and any profits or other accretions to the Corporation shall be used in promoting its objects.

Objects A to E have been attained only to a limited degree. Object F has been fulfilled by the building at 96 Gerrard St. E. in the City of Toronto, which was opened in the fall of 1970. It is in respect of certain rooms within this building that applications for Special Occasion Permits have been applied for and refused by the Liquor Licence Board.

The Corporation and the building erected by them and the facilities provided therein are out of the ordinary. Neill-Wycik is 'an educational co-operative', 'a housing and learning co-operative', 'a new kind of community, democratic member-owned "vertical village" with its own "government" administration, educational program, and co-operative grocery store'. These are some of the terms used in descriptive literature respecting Neill-Wycik.

Many of the members are students at Ryerson Polytechnical Institute which is close at hand. Others are at the University of Toronto, the Ontario College of Art, and George Brown College. There are others who are working people.

Application for membership in exhorting "come live with us" states in part:

Neill-Wycik is "a co-operative community with six hundred and sixty-five members in a high rise building in downtown Toronto....trying to create a environment in which mutual aid will be encouraged and supported....it is a good place to call home".

That in order to become a member of Neill-Wycik College there must be an interest in co-operativism, agreement to abide by all policies set by past and future committees, payment of an annual \$25.00 tuition (education) fee, and a contribution of at least 24 hours every four months to make the college thrive.

In addition to the uniqueness of the accommodation provided, in its variety and setup and the wide range of projects aimed for, Neill-Wycik is unusual in that the accommodation is operated to a degree from May through August as a summer hotel, the facilities of which are available to the members of the public at large, i.e. families, tourists, students, and travelling business people.

In respect of the additional facilities provided, there are several rooms which are used in common with others.

There is a reading lounge on the 22nd floor and a roof deck on the 23rd floor. The use of these two rooms is made available to all without restriction.

There is a basement recreation room ("Stanley Steamer Room") and a cafeteria room ("Frodos")

Food service (breakfast and lunch) is provided in 'Frodos' during the summer hotel period. At that time private dinner parties are available to groups for their evening meals. Meal service during the school year had stopped in 1974 except for special occasions. This room and the basement recreation room has been used pursuant to the objects of Neill-Wycik for educational purposes and under special arrangement.

It is in respect of the basement recreation room and the cafeteria room that the special occasion permits have been requested.

The Tribunal is technically concerned in this hearing with the decision of the Board dated the 27th day of April, being a refusal. In respect of the basement recreation room, the Board refused "to issue Special Occasion Permit for functions to be held at the said College for the reasons set out in Section 6, Subsection 1 (f) of the Liquor Licence Act, 1975, namely, that the premises in respect of which the application for a Permit is made is not eligible for a Permit because the said premises is a dwelling or rooms used in conjunction with a dwelling and is therefore disqualified under Section 33, Subsection 16 of the Regulations under the Liquor Licence Act".

Relevant sections of the Act and Regulations are:

Sec. 8 (1) Subject to the regulations, the Board may issue a permit authorizing the holder thereof to keep for sale, offer for sale, sell, or serve liquor on a special occasion.

(2) An applicant for a permit for a special occasion that complies with the regulations is entitled to be issued the permit except upon the grounds set out in clause d, e, or f of Section 6

Section 6 (1) An applicant for a licence....is entitled to be issued a licence,...except where

(f) the premises and accommodation, equipment and facilities in respect of which the licence is issued do not comply with the provisions of this Act and the regulations applicable thereto

Reg. 1008/75

33 (16)...no event shall take place in a dwelling or rooms used in conjunction with a dwelling under the authority of a special occasion permit

There was a subsequent application in respect of 'Frodos' which was turned down. In the letter of refusal reference was made that the applicants "were advised on April 27th that the College did not qualify for Special Occasion Permits because it was a residence".

Evidence was given on behalf of the Liquor Licence Board of Ontario by W. J. Gertley, Director, Special Occasion Permits, who indicated that he drew a clear and direct analogy between Neill-Wycik College and an apartment building and did not distinguish one from the other. It was on that basis he testified that he felt that Section 33 (16) of the Regulations applied in that the rooms for which the permits were sought "were rooms used in conjunction with a dwelling". It appears that Mr. Gertley based his decision on inspection reports which were conducted in the years 1970 and 1971, and he did not tender any evidence which indicated that he himself approached Neill-Wycik College or that anybody on his behalf approached it during the year 1976. Mr. Gertley indicated that the rooms for which the permit was applied were in his view similar to common rooms which are found in apartment buildings and which are available to tenants of the apartment building.

There was no attempt on behalf of the Board to bring the two rooms within the meaning of a dwelling so that Section 33 (16) would be applicable. Nor was there any attempt to bring the two rooms within the meaning of a residence, since it is clear that term would appear to have no relevance in the context being considered. Mr. Gertley further admitted that in all other respects the requirements of the Act and Regulations would be complied with.

The Tribunal has weighed the evidence before it from Mr. Gertley and from the General Manager of Neill-Wycik and the following important distinctions have revealed themselves when one compares Neill-Wycik to the standard apartment building:

1. The room known as "Frodos", as depicted in an exhibit filed as part of this hearing, is used as a cafeteria from early May to early September of each and every year, a period in excess of four months. It is clear that the residents of Neill-Wycik during that period have access only for the purpose of taking meals in common with other members of the public on the same terms and not especially by virtue of their living in the building that houses Frodos.

During the remainder of the year the room is locked and available to groups only with the permission of the General Manager - not as a matter of right. In fact, the evidence which was tendered reveals that Neill-Wycik intends to use the room not only to promote catered functions in the room otherwise known as "Frodos" and in the basement room for the purpose of the Neill-Wycik residents, but for outsiders as well in order to increase revenues. Evidence was also tendered which reveals that the basement room is used in a similar fashion in that the room is not being made available as of right to the residents of Neill-Wycik but only when permission is obtained for special use occasions.

2. As we have referred to earlier, one of the exhibits filed with the Tribunal indicates that Neill-Wycik is in fact a hotel during the May to September period and advertises itself as such, i.e. a summer hotel. It was further brought out in evidence that there are advertisements in the vicinity of Neill-Wycik which advertises lodging on a nightly basis to the general public. On this basis as well, it is clear that this is not an apartment building in the traditional sense.
3. The legal relationship during the Ryerson school year also differs from that of an apartment in that the resident of Neill-Wycik becomes a member in the co-operative non-profit corporation and in effect obtains a voice in the operation of the co-operative. This again differentiates Neill-Wycik from the traditional apartment building.

Counsel for Neill-Wycik submitted that Neill-Wycik with the exception of the 2 rooms in question was in fact a series of dwellings but that the rooms which are the subject of the applications before the Tribunal are not rooms used in conjunction with the dwellings. To support his argument, he relied on some of the distinctions which are outlined above and the evidence which was tendered on behalf of Neill-Wycik.

It is the Tribunal's opinion, based solely on the only evidence tendered as to the use of the rooms, "Frodos" and "Stanley Steamer Room" and their relationship with Neill-Wycik College, that the rooms are in fact separate entities whether they be used for commercial purposes or otherwise. This is supported in part by the very clear evidence of the General Manager of Neill-Wycik that the rooms were to be used in an attempt to stimulate additional sources of revenue not only with respect to events and functions for the residents of Neill-Wycik but also for events and functions for residents living outside of Neill-Wycik. It is therefore the opinion of the Tribunal that the Board's analogy with an apartment building is untenable and not capable of support.

There is no definition of the word "dwelling" in the Liquor Licence Act or Regulations thereunder. Reference was made by Counsel for the Board to Earl Jowitt Dictionary of English Law, 1959 Edition, Page 686 where though dwelling is not defined, "to dwell" is: namely, 'to "dwell" connotes more definitely than to "reside" a place where a person lives and sleeps'.

It is clear that the 2 rooms are not places where a person lives and sleeps. The question may therefore be considered as - are the 2 "rooms used in conjunction with" places where people live and sleep. The Tribunal interprets the phrase "used in conjunction with" as connoting that the 2 areas must be conjoined or combined or associated in a way that there is an element of special right to use had by the same person to the 2 areas, i.e. a right by a person to the 2 rooms by virtue of living and sleeping in the same building. It is the relationship of the person occupying the dwelling to the 2 rooms that is the determining factor, and not that the 2 rooms are within the same building as the dwelling occupied.

The Tribunal finds the use of the two rooms do not go as of right with the accommodation rented for living purposes; their use is restricted and governed by special regulations and requirements. The lounge on the 22nd floor and the room deck are in a different category; they are patently rooms used in conjunction with a dwelling.

The Tribunal therefore is of the opinion that the 2 rooms in question are not a dwelling, and are not rooms used in conjunction with a dwelling, and accordingly Section 33 (16) is not applicable, and the 2 rooms are not disqualified by virtue of the said section. Since there was no contention that the 2 rooms were in any other way disqualified, it follows that there is an entitlement to the issuance of permits in respect thereof.

The Tribunal hereby directs the Liquor Licence Board that upon application by Neill-Wycik College for Special Occasion Permits in respect of the basement recreation room "Stanley Steamer Room" that the Special Occasion Permits be issued pursuant to and in accordance with the Act and Regulations.

The Tribunal reiterates its view that the same entitlement would exist in respect of the cafeteria room known as "Frodos".

OXFORD HOTEL, Woodstock

#1

Dining Lounge Licence and Public House Licence
issued to
Danmax Corporation of Canada Limited
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON and
JACK C. SIM, MEMBERS

COUNSEL: RONALD P. BIDERMAN representing the Licensee
S. A. GRANNUM representing The Liquor Licence Board

DECISION: 18 October, 1976

The Oxford Hotel is a hotel establishment in the downtown area of the City of Woodstock which has a population of approximately 26,000.

There is issued in respect of this establishment, to Danmax Corporation of Canada Limited, a Dining Lounge Licence #1244 and a Public House Licence #10221.

On the 28th of May, 1976 the Liquor Licence Board issued a proposal to:

"SUSPEND for a period of ten days the Liquor Licences of the above-named establishment

FOR THE FOLLOWING REASONS:

The past conduct of the licensee affords reasonable grounds for belief that business will not be carried on in accordance with law and with integrity and honesty.

The following are the particulars:

1. The licensee did permit persons under the age of 18 years to enter upon that part of the licensed premises licensed as a Public House, contrary to Section 5, subsection (5) of Regulation 1008/75 under the Liquor Licence Act.

2. An employee of the licensee did supply liquor to intoxicated persons on the licensed premises and the person so supplied pleaded guilty in Provincial Court,

Criminal Division to being intoxicated in the said Public House Premises".

Following a hearing the Liquor Licence Board of Ontario issued an order:

"That commencing AUGUST 9TH at 12:00 noon the Liquor Licences of the establishment known as the Oxford Hotel be suspended for a period of six days, to re-open on AUGUST 15TH at 12:00 noon".

There is no dispute as to the facts, which generally were based on the testimony of an officer with the Ontario Provincial Police.

The officer testified as to three separate occasions he had had reason to be present in the Oxford Hotel, the dates being April 2, 9, and 23, 1976. Each was a Friday which is a busy night of operation.

On April 23rd, he visited the Men's Public House portion of the hotel at approximately 9:00 p.m. and his observations revealed two male persons who appeared to be intoxicated. During the hours 9:00 to 11:00 a waitress served draft beer to each of these two patrons. Shortly after 11:00 p.m., uniformed members of the Woodstock Police Department along with other members of the Ontario Provincial Police, entered the Oxford Hotel to conduct age checks and to assist with further investigations. As a result of these officers arriving, two other male persons were found to be intoxicated; both these two persons and the two mentioned previously were charged with being in an intoxicated condition in a public place. The Constable described the actions and behavior of the individuals whom he had concluded were intoxicated. The four persons were convicted under Section 46 subsection 3 of the Liquor Licence Act.

Four patrons whose ages were checked were found to be under the age of eighteen years and were charged under Section 45 (4) of the Liquor Licence Act with being minors on a licensed premises. The constable did not come into contact personally with any one of these four. The constable had information regarding the names of specific persons involved; he gave evidence that these named persons had appeared in Provincial Court, Criminal Division, in Woodstock, had pleaded guilty and upon conviction were required to pay fines.

Some 400 persons (within a seating capacity of 425) were present. An employee of considerable experience and who had resided in Woodstock for some 12 years was in charge.

His employment since has been terminated. The waitress concerned was one of long standing, experienced. Her employment has also been terminated. There were 6 entrances to the Public House areas. The manager had been in the hotel till 11:15 p.m. on the 23rd of April. He admitted it was very difficult for him to ascertain the ages of his patrons and even when identification was produced, it was often found to be false. No age check was being carried out that evening by the management.

The Manager testified that it was hotel policy that intoxicated persons were not to be served and that minors were not to be allowed on the premises. He gave details as to instructions to employees on how to deal with such situations.

The relevant inspector testified that in his numerous calls he never found any difficulties.

At the hearing of the Tribunal a certificate of conviction was filed relating to Danmax Corporation of Canada Limited:

"being the holder of a licence did permit persons under the age of 18 years to enter upon that licenced premises contrary to Section 5 subsection 5 of the Liquor Licence Act of Ontario Regulations #1008/75".

Counsel for the licensee advised that the conviction was under appeal.

The Tribunal finds that there has been a breach of the terms and conditions set out in Section 5 Subsections 4 and 5. The Tribunal accepts the evidence of the constable which was not refuted. The Tribunal equates intoxication with drunkenness. There is no doubt that intoxicated persons were present, which is equivalent to drunkenness being permitted in the licenced premises. There is also no doubt that persons who were in fact under the age of 18 years were permitted in the licenced premises. Persons in charge were present during this period.

It is not necessary that both subsections be breached; a breach of either of the two subsections constituting the term and condition of the licence is sufficient to enable action being taken in respect thereto.

The Tribunal reiterates the Board's serious concern regarding permitting persons under the age of 18 in licenced premises. There is a heavy responsibility on the part of the licensee to prevent this taking place.

Section 11 (3) sets out the power of the Board in respect of suspension of the licence. The Board in its Notice of Proposal and its decision has related the rationale for its action. On the other hand, the Tribunal is exercising its power of action under the second part of subsection 3 'that the licensee is in breach of a term or condition of the licence'.

In the light of this the Tribunal is of the opinion that under its reasoning, action in this instance should be restricted to the licence in respect of which there has been the specific breach of a term or condition, namely, in this instance, the Public House licence.

Accordingly, pursuant to the powers of the Tribunal as set out in Section 15 subsection 3, the Tribunal alters the decision of the Board, to make the suspension restrictive to the Public House Licence.

The Tribunal confirms the period of time set forth by the Board, namely, 6 days, and directs the Board to set the commencement and termination of the said suspension.

OXFORD HOTEL, Woodstock

#2

Dining Lounge Licence and Public House Licence
issued to
Danmax Corporation of Canada Limited
APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON and
JACK C. SIM, MEMBERS

COUNSEL: RONALD P. BIDERMAN representing the Licensee
S. A. GRANNUM representing The Liquor Licence Board

DECISION: 18 October, 1976

The Oxford Hotel is a hotel established in the Downtown area of the City of Woodstock which has a population of approximately 26,000.

Danmax Corporation of Canada Limited purchased the Oxford Hotel from the Estate in Bankruptcy of a predecessor, taking over in approximately March of 1974. Despite intensive efforts the operation of the Hotel has still not proven profitable.

The Hotel offers 35-40 rooms located on the second and third floors. The basement contains the dining lounge, kitchen, and an unlicensed banquet hall. The first floor contains the office, lobby, and public house rooms with cafeteria. There is a parking area for around 25 cars.

There is issued in respect of the establishment a Dining Lounge Licence and a Public House Licence.

Live entertainment is offered nightly.

The citizens of Woodstock have not declared in favour of the sale of spirits, beer, and wine under a lounge licence.

Achieving and maintaining a balance in sale of liquor and food in the dining lounge has been a particular problem since commencement. The following quarterly figures have been filed by the Licensee:

<u>Quarterly Period Ending</u>	<u>Liquor</u>	<u>Food</u>	<u>Ratio Food to Total Sales</u>
March, 1974	\$ 12,310	25,152	68%
December, 1974	31,219	22,617	42%
March 1975	26,181	21,987	45%
June 1975	26,944	21,101	44%
September 1975	24,795	15,146	38%
December 1975	22,536	12,310	35%

The above figures were reviewed by the Board upon the appearance on 27 January, 1976, of the manager in respect of a request for additional dining lounge facilities. The Chairman pointed out that the Board was greatly concerned about the imbalance of the food/liquor ratio, emphasizing that this is a Dining Lounge operation and not a Lounge, pointing out that Lounge privileges have not been voted into the area in which this establishment is situated. It was agreed that the Dining Lounge became an entertainment lounge after 9:00 p.m. and that this was the cause of the food/liquor ratio problem. The Manager was warned at that time that the Board would not condone this operation.

On July 14th, 1976 Danmax Corporation of Canada again appeared before the Board on a 'Proposal' by the Board to attach terms and conditions because of an imbalance for the following reasons:

"The licensee is carrying on activities that are in contravention of Section 6 subsection 5 of Regulation 1008/75 under the Liquor Licence Act 1975 and that the total receipts from the sale of liquor in the Dining Lounge exceed the total receipts from the sale of food".

At this time, quarterly reports for the period ending March 31st, 1976 and June 30th, 1976 were reviewed. These reports showed:

<u>Quarterly Period Ending</u>	<u>Liquor</u>	<u>Food</u>	<u>Ratio Food to Total Sales</u>
March 31, 1976	\$ 19,158	11,592	37%
June 30, 1976	21,444	17,817	45%

(There was a notation on the March 31 return as of April 10th that "the manager was cautioned re. ratios" but at the Tribunal hearing the Manager could not recall this having taken place).

Mr. Selskey, through his counsel, advised that he was trying to rectify the imbalance by actively promoting the sale of food. The Board was satisfied that while the Dining Lounge operates properly and appears to do a good food business during normal eating hours, the problem begins at 10 p.m. when the entertainment is provided, thereby encouraging the Dining Lounge to be used as a 'Lounge'. The imbalance of the figures shows that much liquor was being served without food during the period reviewed.

The Board ordered

"that commencing on Monday, the 16th of August, 1976, the sale and service of spirits, beer, and wine in the licenced premises of the Oxford Hotel SHALL CEASE at 10:00 p.m. every evening until such time as the licence holder, Danmax Corporation of Canada Limited has filed with this Board quarterly reports for the period ending September, 1976, and December, 1976.

At the Tribunal hearing the manager outlined steps taken by the Applicant which have led in recent months, to an improvement in the imbalance of food and liquor sales.

The Tribunal makes the following observations:

On behalf of the licensee it was put forward (but withdrawn at the hearing before the Tribunal) that no breach of the regulations has been shown in that it cannot be inferred that in any one given month total receipts from the sale of liquor exceeded the total receipts from the sale of food, which is the term set out in Section 6 (5) of Regulation 1008/75.

The Tribunal agrees with the withdrawal of this position for it is clear that if a quarterly return is in imbalance, there must be at least one month thereof in imbalance. However, it would be helpful if the Board considered these matters on the basis of monthly statistics which are readily available. In this regard the Tribunal expresses the opinion that the Notice of Proposal should set out the breach in specific and that it not be expressed in general terms as was done in the instant case.

The Tribunal agrees with the position stated at this hearing that the action by the Board with respect to the Public House licence was invalid, since the food ratio is not applicable thereto.

There was filed with the Tribunal a copy of the most recent quarterly return as follows:

Quarterly Period Ending	Liquor	Food	Ratio Food to Total Sales
30 Sept. 1976	22,950.05	19,305.80	45.7%

There was a notation thereon that for the month of September the liquor sales were \$6,144.95 and food sales were \$6,892.80, i.e. food sales exceeded liquor sales by \$747.85. Food sales were that month 52.97% of total sales.

The Tribunal is mindful of the genuine and specific efforts of the licensee to rectify the imbalance between the liquor sales and food sales ratios and the sincerity of the manager to bring the same in conformity with the regulation, which is a term and condition of the licence, noting that efforts have in recent quarterly returns raised the proportion from 37% to 45% and again 45% in the most recent quarter filed at the present time. September sales of food have now gone beyond the 50% ratio.

The Tribunal is mindful that the power of the Board under Section 10 (1) to

"at any time review a licence or permit on its own initiative and attach such further terms and conditions as it considers proper to give effect to the purposes of this Act",

empowers the Board to review and as we interpret, 're-review' the licence at any time so that whatever the Tribunal's decision is at the moment, the licence is always subject to a review and the imposition of further terms and conditions.

If the Tribunal's present determination that the licensee is in the course of rectifying the imbalance proves to be incorrect by virtue of further monthly and quarterly returns to be filed, the Board always has the power of again reviewing the licence.

Accordingly, the Tribunal hereby revokes the order of the Board imposing the term and condition as set out in its decision of the 16th of July, 1976.

DIPLOMAT TAVERN, Downsview

Dining Lounge Licence
issued to
Steve Galiotos, Jim Procopos, and Jim Siropoulos
APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS*

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON and
JACK C. SIM, MEMBERS

COUNSEL: DOUGLAS G. TANNAHILL representing the licensees
S. A. GRANNUM representing The Liquor Licence Board

DECISION: 18 January, 1977

The Diplomat Tavern is a restaurant in the Borough of North York, a suburban municipality within the Municipality of Metropolitan Toronto located in a small shopping mall of approximately seven stores with adjoining parking which is situated within a commercial-industrial park with restaurants and taverns nearby.

The licensees purchased the business on September 22, 1955. In respect of the premises of 2 storeys there is issued a Dining Lounge Licence in respect of 2 separate rooms. The downstairs room with a licensed capacity of 57 persons operates daily during the period 12 p.m. to 1 a.m. with no entertainment.

The upstairs room with a licensed capacity of 55 persons operates normally daily from 12 p.m. to 2:30 p.m. and 4:30 p.m. to 1 a.m. There is live nightly entertainment in the upstairs room in the form of exotic (go-go) dancing Monday through Friday for the hours of 5 p.m. through 8:30 p.m. A disc jockey plays recorded music for the "disco" entertainment (music and dancing) of the patrons Monday through Saturday for the hours of 9 p.m. - 1 a.m. The same type of entertainment was provided by the previous proprietor and the applicants continued it.

The patronage is varied - from persons working in the area during the daytime and from the nearby residential area during the evening.

The general operation of the tavern is without criticism, with full and adequate facilities and service for food.

The Tavern has a busy and excellent noon (lunch) hour trade. There is not too much regular demand for food during the course of the evening; patrons generally at that time frequent the tavern to enjoy the entertainment. However, at times quite a few would be eating and during the midnight period some persons would ordinarily start to eat. At all times the chef is on duty. Very good food is available and the menu is in front of the patrons.

The Board took action based on the following quarterly reports:

<u>Period</u>	<u>Liquor</u>	<u>Food</u>	<u>Ratio Food to Total Sales</u>
15 Sept/75 to Dec 31/75	55,515	25,033	31%
1 Jan/76 to Mar 31/76	55,003	23,003	29%
1 Apr/76 to June 30/76	59,197	24,842	30%

The inspector has cautioned about the imbalance. There was a notation on the June 30 return "notified owners of high liquor sales - July 16, 1976".

The Board found "that the Licensees have in fact been in contravention of Section 6 (5) of Regulation 1008/75. The Tribunal agrees with this finding.

The Board being of the opinion that it had no recourse but to endeavour to assist by reducing the hours of alcoholic consumption, ordered on the 16th September, 1976 "that the sale and service of alcoholic beverages in these licensed premises SHALL CEASE at 10:00 p.m. daily effective at the closing hour October 2nd, 1976 and to remain in effect until March 21st, 1977 at which time this Order will be reviewed by the Board."

There was no dispute that the requirements of Section 6 (5) (a) of the Regulations were not being met. However, there was asserted on behalf of the licensees that a great deal of money and effort had been expended to increase the sale of food, and future plans included remodeling the kitchen for greater efficiency and offering breakfast at 7 a.m.

The licensees have been concerned about and have earnestly exerted what appears to be every effort to increase the sale of food. The inspector answered in respect of the manager "he was doing the best he could to increase the sale of food". The three chefs are on duty in the day and one in the evening. There is always food and adequate service staff available to all patrons. There have been daily 'Specials' and small steaks very attractively priced. The menu is changed frequently. Waitresses promote the sale of food, always asking

patrons, "Would you like something to eat?" There has been advertising on and off the premises: luncheon mats, outdoor signs, and distribution of leaflets. Signs are posted outside the tavern to encourage people to come in to dine.

The Tribunal finds that there is a bona fide effort in regard to the sale of food, and the licensees have drawn on their experience in an attempt to meet the requirements of Section 6 (5) (a).

It would appear that a contributing factor to the imbalance is not the amount of food sold but the low price at which the food is sold. The pertinent regulation does not refer to a balance of food with liquor, but a dollar sale of food with a dollar sale of liquor. Indeed there was described a circle. The low pricing of the menu, done deliberately to attract more customers, is the same factor which contributes to the imbalance of the dollar amount of food.

It would appear that the solution is to increase the price of the food. This may lead to another circle in that the prices may drive away the particular clientele theretofore attracted, and accordingly the dollar value of the food sales would not necessarily increase. It may however, also lead to a less dollar value of liquor being sold. The balance referred to in the regulations may be so achieved, but the business may close because of a lack of sufficient aggregate value of business to sustain the operation. The food has been sold at cost; to have had a balance the menu prices would have had to be doubled.

When the applicants purchased the business in 1975 they were unaware of the continuing imbalance that had existed, having in no uncertain terms been advised by the Board of the problems previously encountered.

The figures during 1973, 1974, 1975 filed by the predecessors of the licensees had shown a ratio of food to total sales ranging from 26 to 33%.

Mr. Galiotos explained that he and his partners had decided they would make a success of the venture as they were willing to work very hard at it. There is no doubt that the applicants were sincere in their position and were confident of their ability to do so. They have done their utmost to achieve this; the steps taken and the slight betterment of the balance testified to this.

Indeed, the improvement for the 3rd quarter of 1976 filed with the Tribunal of \$57,275 for liquor and \$27,489 for food is considerably over the third quarter in 1973 of \$52,786

for liquor and \$20,265 for food. That food increase of \$7,000 was referred to by the Inspector as substantial. The percentage was 4% higher. The figures for food sales in November, 1976 was improved to over \$10,000 for the month to a percentage of 33%. The imbalance is still significant and serious.

The licensees take the position that with a new business (and the situation with respect to the imbalance at the time of purchase was such that this should be so considered) it would take from 1 to 3 years to build up the necessary trade to make it a viable operation with a required balance.

The Board at just a little under a year of operation took action in the light of 9½ months of figures. It is to be noted that there had been a continuing imbalance for more than 2½ years with the previous licensee with no action apparently having been taken by the Board. The Board expressed an opinion that they had allowed the licensees "a year in which to meet the the food/liquor requirements". The Tribunal has had the benefit of more months of figures which are indicators of improvement.

It is evident that a basic principle of the development of the legislation pertaining to the sale of liquor in Ontario is that liquor and food should go together. Indeed, some years ago as a matter of policy there had to be demonstrated in fact that a restaurant operation could be viable without the sale of liquor. The legislature has from time to time dealt with this difficult matter in order to give effect to this principle, and had sought to develop a yardstick by which compliance could be measured and by which the board would be assisted in enforcement. Sec. 6 (5) (a) is the present provision in this regard. As it reads, it is clear, unequivocal, and inflexible. However, The Tribunal can take cognizance that the Legislature was trying to prevent an emphasis on the sale of liquor; it wanted to prevent and eliminate the 'pushing' of liquor. In this instance the licensees are mindful of this attitude. "It is not a tavern that could care less whether you eat or not" said the inspector.

We cannot find that the Legislature intended to be rigid regarding the opportunity to a licensee to comply with the Section. If it were so, the directions to the Board respecting its action as the consequence of a failure to meet Sec. 6 (5) (a) would have been to bring about an automatic result.

The Board took the position that it had no alternative but to take action. The Tribunal finds that though discretion to the Board is not spelled out, the Board in effect can exercise a discretion in that the attaching of conditions is not a mandatory requirement, and in that the Board acts on its own initiative whether, the time when, and situation in which, it will take action. These are matters of its own choice.

The Board was of the opinion that the restrictions on hours would lead to a proper balance and also that a restriction on hours was a lesser penalty than a suspension for a breach of a regulation.

The Tribunal was presented with no evidence as to the validity of the former though it may be so; the licensees do not concur in this view. The licensees also take the position that the condition of lesser hours would be tantamount to a revocation of the licence in that they could be forced out of business through a loss of customers because the service sought by these customers would not be available.

The Board is charged with the enforcement of the Act and Regulations, and accordingly, cannot permit breaches thereof even with respect to regulatory aspects to continue indefinitely. The Board is in the difficult situation of taking action to bring about compliance with a regulatory provision which makes the persons affected consider themselves aggrieved. It is a problem which, though prevalent in that other licensees were having similar difficulties, must be dealt with.

The Tribunal is of the opinion that a 2-year period would under the circumstances be a reasonable period at the end of which to assess this operation in the light of Sec. 6 (5) (a) of the Regulations. By the 15 October, 1977, the food figures for and up to the month of September, 1977 will be available for review.

The Liquor Licence Appeal Tribunal revokes the decision of the Liquor Licence Board and hereby directs the Board to review the licence after the 15th day of October, 1977, to determine whether there should be attached at that time a further term and condition as the Board considers proper.*

*NOTE: The above decision was appealed to the Supreme Court of Ontario (Divisional Court).
The appeal had not been concluded at the time of this publication.

UPTOWN MOTOR HOTEL, Thunder Bay

Application for Transfer
by Mike Goyda Enterprises Limited
APPEAL FROM REFUSAL TO APPROVE TRANSFER

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON and
JACK C. SIM, MEMBERS

COUNSEL: R. J. WALNECK, Q.C. representing the Applicants
S. A. GRANNUM representing The Liquor Licence Board

DECISION: 1 February, 1977

The proposal by the Liquor Licence Board to refuse to approve the transfer in this matter was because:

Pursuant to Section 11 of the Liquor Licence Act 1975 the applicant is not entitled to be issued a liquor licence because of the past conduct of certain of its officers and shareholders who own or control 10% or more of its equity shares affords reasonable grounds for belief that the business will not be carried on in accordance with law. Particulars of the said conduct are that Michael Goyda and Ronald Michael Goyda have been convicted of certain offences as set out in their personal history reports filed with the Board.

Mr. Grannum on behalf of the Board agreed that the past conduct of Michael Goyda was not in question in that the only offence set out in the personal history report related to a single traffic incident.

In respect of Ronald Michael Goyda, the Tribunal had before it the consideration of 3 convictions in respect of certain sections of the Criminal Code, and 1 breach of the Petty Trespass Act. The Tribunal has had the opportunity of listening to explanations by Ronald Goyda of these convictions. None of the offences related to the conduct of a business licensed under the Liquor Licence Act.

The Tribunal expresses its concern about the breaches of the Criminal Code committed by Ronald Goyda and is not to be taken as a ruling that such are completely unrelated

to the judgement to be made in reference to Section 6 (1) (c) (ii). Such past conduct of Ronald Michael Goyda as Secretary-Treasurer of Michael Goyda Enterprises Limited, i.e. as an officer thereof, is relevant though not to be decisive.

The Tribunal had the opportunity of listening to the testimony of Sgt. Mike O'Neill of Thunder Bay Police Department, who was forthright in telling the Tribunal that from his direct personal knowledge of Ronald Michael Goyda there was nothing which would be negative to Mr. Goyda's carrying on of a business licenced under the Liquor Licence Act. The Tribunal is cognizant also that since April, 1973, a period of over 3½ years, Mr. Goyda's conduct has not been the subject of any criminal offense.

It is to be noted that Ronald Michael Goyda was associated with his father, Michael Goyda, in the management of of Scott's Tavern, Thunder Bay, from 1966 to 1974. There is nothing in the Board file relating to this establishment which would indicate that it was not carried on in accordance with the requirements of the legislation and the policy of the Board during this period, or that called into question any conduct of Ronald Goyda in any regard.

The Tribunal is mindful that a negative finding in respect of the conduct of Ronald Goyda would be in effect depriving him of an opportunity within a field of work, which apart from his activity as an entertainer, appears to be the only one for which he is equipped. Such action would constitute a drastic penalty to be imposed only upon clear evidence of a serious nature.

The Tribunal has before it evidence in support of Ronald Goyda's character and has heard his own testimony in respect of himself, to which the Tribunal gives credence.

The Tribunal finds that the past conduct of Michael Goyda and that of Ronald Goyda in totality is not such as to afford reasonable grounds for believing that the business of the applicant would not be carried on in accordance with the law and with integrity and honesty and the Tribunal substitutes its opinion for that of the Board in this regard.

The second reason set forth in the Notice of Proposal by the Board was as follows:

"Having regard to the financial position of the applicant corporation, it cannot reasonably be expected to be financially responsible in the conduct of its business".

The Tribunal has had before it the financial arrangements respecting the transfer. An examination of the indebtedness to be incurred and the cash flow to be generated to service such debt clearly indicates that the applicant, having regard to its financial position, cannot reasonably be expected to be financially responsible in the conduct of its business. Accordingly, the Tribunal confirms the reason of the Board in this regard.

The Tribunal hereby orders an alteration of the decision of the Board by the deletion from the Notice of Proposal Paragraph 1 of the reasons, and directs the Board to issue a final decision refusing the approval of the transfer based on Section 6 (1) (c) (i) as referred to in Reason #2 of the Notice of Proposal.

CECIL TAVERN, Hamilton

Dining Lounge Licence and Lounge Licence
issued to
Joseph Cvetkovic and Ivan Cvetkovic
APPEAL FROM SUSPENSION *

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON and
JACK C. SIM, MEMBERS

COUNSEL: JOSEPH DUBECK representing the Licensees
S. A. GRANNUM representing the Liquor Licence Board

DECISION: 7 April, 1977

The licence holders, Joseph Cvetkovic and Ivan Cvetkovic, carry on business in partnership as Cecil Tavern located at 113 James Street North in Hamilton.

On the second floor of the building are two licensed dining lounge areas having a total seating capacity of 82 persons. On the main floor are two licensed lounge areas having a total seating capacity of 190 persons.

From some time prior to 1945 until 1972, the premises were classified by the Board as a Public House. In 1972 the classification was changed to Tavern and the Public House licences were replaced by a Lounge Licence and a Dining Lounge Licence. The lounge is amongst the busiest in the city: the dining lounge is not busy.

In 1969 Joseph Cvetkovic and Ivan Cvetkovic purchased the premises and became licensees. Except for the suspension of the licences by the Liquor Licence Board in October, 1976 which is the subject of this appeal, the Board has never suspended or revoked the licences of the premises during the time of ownership thereof by the present licence holders.

By Notice of Proposal dated the 15th June, 1976 the Board proposed to refuse to renew the dining lounge and lounge licences for the following reasons:

"the past conduct of the licensees affords reasonable grounds for belief that they will not carry on business in accordance with law and integrity and honesty:

- (firstly) Particulars of the said past conduct are that the licensees or their employees did, between 1974 and 1976 supply liquor to persons under the age of eighteen years.
- (secondly) The licensees have been charged with supplying liquor to intoxicated persons on the 5th April, 1976.
- (thirdly) On or about the 28th February, 1976 the Licensees and their employees did permit disorderly conduct to take place in the licensed premises contrary to Section 5, Subsection (4) of Regulation 1008/76 under the Liquor Licence Act."

The licence holders, by their solicitors, requested a hearing by the Board which was held on July 22nd, 1976, September 21st, 1976, and October 12th, 1976.

The Tribunal has reviewed the action by the Liquor Licence Board.

The Board dealt with the firstly listed allegation, "That the licensees or their employees did, between 1974 and 1976, supply liquor to persons under the age of eighteen years"

as follows:

The Board came to the following conclusions as set out in their decision that 9 persons, 4 age 16, 5 age 17, were charged and convicted of being in the licensed premises on various special dates from September 13th, 1974 to November 7, 1975 inclusive.

In respect of the listed - in the uniform of the Sea Cadets - age 16 - the Board noted that the evidence indicated that he was seen staggering, indicating an apparently intoxicated condition.

The decision of the Board of 25 October, 1976, is based on this allegation:

"Licences of the Cecil Tavern will be renewed but, that, as a result of the evidence produced at the 'Hearing' indicating that the licensees or their employees did supply liquor to persons under the age of eighteen (18) years, the licences of the Cecil Tavern shall be "SUSPENDED" from the closing hour Saturday, October 30th, 1976, to the opening hour Monday, November 8th, 1976".

The Tribunal is of the opinion that the conclusions are not conclusive of the allegation of supplying which is an offence separate from that of unlawfully being on licensed premises. There is no offence of being licensee of premises in respect of which persons under 18 have been convicted under Section 57 (2); in such case the particulars would have been relevant. Further, apart from the evidence the Tribunal will be referring to and commenting on herein, the only other direct evidence relating to supplying before the Board was that one of the above-mentioned said that "one of his friends had given him the beer".

The Board also found,

"the licensees, namely, Joseph Cvetkovic and Ivan Cvetkovic, did permit minors to be on the licensed premises as indicated earlier".

This latter finding had not been alleged in the Notice of Proposal and was not cited as a reason for the suspension. In respect of this the convictions listed would be most relevant.

At the hearing before the Tribunal, Mr. Grannum did add to the allegations stated in the Notice of Proposal as follows:

"The licence holders did permit persons under or apparently under the age of eighteen to enter or be upon that part of the licensed premises known as the Tap Room and being the part of the premises in respect of which a lounge licence was issued. Particulars of the dates and persons were listed.

The said persons were convicted in Provincial Court (Criminal Division) at Hamilton, Ontario, under the Liquor Licence Act R.S.O. 1970 c250S.57 ss(2)."

He also gave notice that he would not be introducing evidence with respect to the first 5 individuals listed. Accordingly, the fact of the 'giving of the beer' above cited was not placed in evidence.

These same specifics, available at the time of the Notice of Proposal, should have been spelled out therein and this allegation, added at the Tribunal hearing, should have been properly in the Notice of Proposal.

Although the word, "particulars" was used in the Notice of Proposal, the Tribunal is of the opinion that the first allegation fell considerably short of providing the kind of detail that would warrant such a word. The licensees should in fairness have been advised of all the specifics which the Board had and which came out during the course of the hearing.

However, the licensees have had a full opportunity of presenting their case at the hearings of the Board and of the Tribunal, and have in no way been prejudiced in that regard.

The Board did not deal with the secondly listed allegation -

"The licensees have been charged with supplying liquor to intoxicated persons 5th April, 1976".

On the record, the Board made no finding in respect of this allegation.

The Tribunal does not believe it proper for a Notice of Proposal to contain as basis of action an allegation that a charge has been laid. This may be why the Board did not delve into the matter at their hearing.

At their hearing the Board, unwittingly it would appear, heard evidence with respect to this from witnesses called on behalf of the licensees. The testimony was given as relating inadvertently to the 28th February, 1976. In the transcript of the hearing before the Board appear the following statements: When asked by the solicitor for the licensees about "evidence....with respect to the occurrences on April 4, 1976, the Chairman replied, "The Board is satisfied to consider it based on what evidence we have at this time" and at the close of the hearing he stated, "there are certain charges as you know that are presently before the Court and we are not considering in any way that they will be dealt with in due course by the Board but they have no part to play in this situation today. We appreciate your cooperation and we wanted to give you every opportunity to present your evidence and bring forth the facts that you indicated previously and I hope we have done so".

At the Tribunal hearing, evidence with respect to the event of April 5th, 1976 was introduced by Mr. Grannum on behalf of the licensees.

The Board dealt with the thirdly listed allegation:

"On or about the 28th February, 1976, the licensees and their employees did permit disorderly conduct to take place in the licensed premises contrary to Section 5 Subsection (4) of Regulation 1008/75 under the Liquor Licence Act"

as follows:

The Board heard evidence with respect to the allegation. However, as we have pointed out, this was replied to on behalf of the licensees with details of what occurred on April 5th. The Board made no reference nor any finding with regard to this allegation.

At the Tribunal hearing Mr. Grannum stated he did not intend to introduce evidence relating to this allegation and did not.

The allegations which were placed before the Tribunal are summarized as follows:

1. That the licensees did permit minors on the licensed premises.
2. That the licensees supplied liquor to minors.
3. That the licensees supplied liquor to intoxicated persons.

With reference to the first allegation, the relevant statutory provision is Sec. 56 (5) of the Liquor Licence Act R.S.O. 1970, c. 250, as amended, namely:

"56 (5) No person holding a licence under this Act shall permit or suffer any person under or apparently under the age of eighteen years to enter or be upon that part of the licensed premises where liquor is sold or kept for sale, except in a dining room or dining lounge."

The words "permit" or "suffer" have been the subject of judicial comment: In R.v. Royal Canadian Legion (1971) 4 C.C.C. (2d) 196, 21 D.L.R. (3d) 148 (1971) 3 O.R. 552, a decision of the Ontario Court of Appeal the Court had this to say [at pp. 202-3] when considering the effect of the two words:

"In the unabridged edition of the Oxford Dictionary we find amongst the definitions for the word "permit" that of "not to prevent". In our opinion, the words "permit or suffer" in s. 53 (4) are used in this connotation. Adopting this meaning s-s (4) would then read: "No person holding a licence under this Act shall not prevent in the premises for which the licence issued - drunkenness".

In the instant case the Tribunal considers the word "permit" as including the action "not to prevent" the entering or being upon the lounge premises of certain persons under 18.

That court said further:

"in our view, that group of sections in which S53 (4) is contained casts on the licensee the

statutory duty to insure that ...certain specified acts do not occur...the only way in which the responsibility of the licensee can be expressed is to impose upon him, the licensee, the obligation not to permit or suffer the undesirable conduct,..."

Section 53 (4) is the predecessor of present s.56 (5). In Regina v. Action Tavern Ltd. 26 C.C.C. (2d) 127 Greco Prov. Ct. J. discussed the terms [at p. 133]:

"What must the licensee do in order to 'insure that' he does not 'permit' or 'suffer' the undesired acts to take place? The Oxford English Dictionary defines insure as 'to make sure, secure, or certain'. The Court of Appeal of Ontario in the Royal Canadian Legion decision above said that the statutory duty imposed was that the licensee had to 'insure that certain specified acts do not occur'. What the learned judges said in effect, therefore, was that the licensee was bound by statute to make certain that the prohibited acts did not occur.

How can the licensee accomplish this? In my opinion the dilemma with which he is so frequently confronted is not lacking of solution. Really, common sense itself dictates the answer. It can be said that the licensee would permit or suffer the prohibited conduct if he abstained from taking reasonable steps to make certain that it did not happen. Speaking positively, the licensee should at all times do all that which an ordinary prudent man would do in exercising reasonable diligence in the carrying out of his particular type of business venture. Of course, what is reasonable in one type of business or case may fall short of or exceed that which may be reasonable in another. It has long been recognized in our law that reasonableness is relative and must be proportioned to the circumstances of the case considered as an entirety.

In the present case it is obvious that the accused company, through its chief shareholder and its employees was very familiar with the type of business in which the company was engaged. It is obvious as well, that the

accused was cognizant of most, if not all of the problems which always seem to arise when alcoholic beverages are sold. I am satisfied beyond any question, that the accused was, and is, fully aware of the fact, that one of the most serious problems faced by licensees was, and continues to be, the problem of the underaged, would-be-patron who presents himself at the licensed establishment with the great expectation of being served. This phenomenon, although not unique in our present-day society, is one of the well-known hazards of the trade in which the accused is engaged. It is a hazard legislated against. It is a hazard against the breach of which the licensee must protect himself by exercising reasonable and constant diligence in the conduct of his activities. By this I do not mean that he must do all that is humanly possible since such a standard would often require him to be a clairvoyant. The knowledge possessed by the owner of the frequency of the attempts made by under-age drinkers to be admitted to and be served in the licensed premises must put him on his guard and must result in his always taking all reasonable steps to make certain or insure that a breach of the law does not occur".

Constable Philip Slack of the Hamilton Regional Police gave evidence respecting the allegations with respect to certain minors.

On Friday, November 7th, at approximately 12:55 a.m. he and Sgt. Pearson of the Vice Squad were on duty - in plain clothes. They made a check at Cecil Tavern. Upon entering, they observed two males later identified as Mike R. Irvine and James Robichaud, seated. To Constable Slack both parties were obviously under the age of 18. Indeed, at the time that he first saw them, he thought they might be juveniles, i.e. very young, 13-14. Robichaud was slumped over the table with his head down on his hands; he appeared to be asleep. As the officers walked into the Tavern, Irvine got up and walked in a direction which led to a washroom and to an exit. Constable Slack described his motion as staggering. He wore a black jacket with shoulder flash of the Sea Cadets. Robichaud had nothing of this nature on his clothing. Irvine was brought back back to the table and questioning followed. Robichaud had no age identification, Irvine had an identification which had been altered to show 18 as his age.

The officers arrested the two youths when both

admitted to their ages; Michael Irvine admitted to 16 and James Robichaud to 17. Mike Irvine was born 18th September, 1959, and James Robichaud was born 12th day of February, 1958. Both said later they had been drinking and that they had been in the hotel for the past two and one-half hours. Officer Slack was of the opinion that their condition indicated that length of time of drinking.

A waiter testified that he had noticed the 2 boys talking to 4 girls, that they had been told to leave, one was leaving and the other was leaning over talking to the girls.

Constable Slack concluded from the fact that Robichaud was slumped over that he was intoxicated. This position would also be consistent with a motion made if someone wanted to duck out of sight as Robichaud would if he had recognized the officers. Constable Slack also concluded from the fact that Irvine was staggering, that he was obviously intoxicated. Irvine's motion would be consistent with the motion of someone moving quickly between tables as Irvine might have done to get out after recognizing the police officers. However, since the officers were in plain clothes, it is not likely that they would have been recognized as such by the 2 males.

At the time they were apprehended, there were several full and empty draft beer glasses on the table at which they and others were.

While or upon exiting, Constable Slack related a conversation with Joseph Cvetkovic about the presence of the 2 males and that obviously they were under the age of 18. Whereupon the latter's reply was that they were members of the Armed Forces and he had been advised by his liquor inspector that he was compelled to serve members of the Armed Forces. Joseph Cvetkovic's version was that the males insisted that they should be served as they were members of the Armed Forces, but he didn't accede to this.

Evidence was given by Joseph Cvetkovic and an employee that the 2 males had been on the premises two or three days earlier and had been asked to leave just as a policeman was there, and the latter took them away.

On the evening in question the 2 males had been upstairs in the Dining Lounge, had requested a drink and had been refused. They thereupon went to the downstairs lounge. Joseph Cvetkovic testified that they had been asked to leave. Before they had done so the officers had come in. The two males had been on the premises, according to Joseph Cvetkovic, for about 7 minutes.

The Tribunal finds that Mike R. Irvine and James Robichaud, persons under the age of 18, were on premises

licensed as a lounge contrary to Sec. 57 Subsection (2) of the Liquor Licence Act, and finds that Joseph Cvetkovic and Ivan Cvetkovic, the licensees, did permit or suffer them to be there contrary to Section 56 Subsection (5).

Joseph Cvetkovic is an experienced licensee. He was, by his own testimony, of the opinion that the 2 males were under 18, indeed, it appears they were accepted to be under 18. This was corroborated by a waiter in that he said he had refused to serve them. In any event, it appears abundantly clear that each of them was under 18. Joseph Cvetkovic was or should have been aware of the seriousness of the situation and should have taken immediate and effective action to have them off the premises, ejected if necessary. Indeed, as we will refer to later, the licensees should have adopted measures which would have more stringently prevented the coming into the licensed premises of minors generally and these two particularly. His attitude on this occasion can at the least be described as careless.

Later on the same date, i.e. the evening of Friday, November 7th, at 11:20 p.m. Constable Slack and Officer Pearson again returned to the Tap Room and at this time observed two females seated at a table. They appeared to them to be under the age of 18, one girl definitely looking young, the other one borderline in that she could have been taken for 18. The officers checked them both and they both stated that they were 18. They were not believed and were taken out of the premises to the station. At the station they had no identification or date of birth on them, and after interrogation they both admitted to be 17 years of age. Sherry Tompkins was born the 6th day of February, 1958 and Leslie Foreman was born the 27th day of September, 1958. At the time they were in the lounge, there was 1 bottle on the table at which the 2 were seated. There is no indication as to whom the bottle belonged. No enquiry was made.

The officers had no discussions in the lounge with anyone except John Young, the band leader, who volunteered the information that Sherry Tompkins, whom he had known for some years as the daughter of a friend, was over 18.

The Tribunal finds that Sherry Tompkins and Leslie Foreman, persons under the age of eighteen, were on this occasion on premises licensed as a lounge contrary to Section 57 Subsection (2) of the Liquor Licence Act and finds that Joseph Cvetkovic and Ivan Cvetkovic, holders of the lounge licence, did permit or suffer them to be there contrary to Section 56, Subsection (5).

The approach of the licensees was not such as to prevent the entry of prohibited persons. They did not assign

anyone to supervise the doors specifically or indeed the entrance generally to ensure the non-entry; they took action only after such persons were on the premises. Supervision was in practice the sole responsibility of the licensees, either singly or together. Joseph Cvetkovic declared that it was the shared responsibility of the waitresses. It is too much to expect busy waitresses to be able to cope with supervision; in any event, such supervision where persons are already seated and placing orders is in our opinion too late when practiced as a general rule.

If action taken was not responded to favorably the licensees turned to the police, even though the presence of the latter was on occasion resented when they came on their own. Joseph Cvetkovic stated, perhaps exuberantly, that in seven years he had personally called the police station 300 times to take a minor out. This highlighted not only an appearance of a certain amount of abdication of responsibility to the police but also that the licensees should have recognized the presence of minors as a major problem to be dealt with by significant measures.

Joseph Cvetkovic testified that he did not stay on doors because he had lost an eye, but this is not sufficient reason for not providing supervision respecting entry, especially when experience through the years showed that difficulties of the kind that is the subject matter of this hearing should be expected, and prudence would have indicated precautionary measures. That some other licensed premises do not have someone "on the doors" is no answer; the fact that some do is relevant. It is true that the licensees have issued instructions to staff respecting no service to minors and the methods of identification of age. However, there is no doubt that the situation of Cecil Tavern called for more stringent action, especially when the age was reduced from 21 to 18, a change which calls for an even more watchful eye and action respecting minors. Though all breaches of the Act and Regulations are of consequence, there is no doubt as to the seriousness of those relating to persons under 18. That a high degree of responsibility is placed on licensees is evidenced by the fact that the Legislature has given licensees unusual authority - as set out in Section 56 (6), namely:

"Any person holding a licence under this Act who has reasonable grounds to suspect from the conduct of any person who has come upon the premises in respect of which such licence is issued that such person, although not of notoriously bad character, is present for some improper purpose or is committing an offence against this Act or the Regulations, may request such person to leave the licensed premises immediately, and, unless the request

is forthwith complied with, such person may be forcibly removed".

It has been held that the section respecting minors on licensed premises becomes "a prohibition which requires that the licence holder exercise every care to see that the person under age be not admitted to the premises, and that if there is any carelessness or any inadequate care taken to achieve this end, then the licence holder will be liable under the terms of the section..." Clark v. The Queen (Ont) 5 CRNS 291

The four mentioned minors were charged and convicted under Section 57 (2) of the Liquor Licence Act RSO C250.

"Any person who under the age of 18 years enters or is found upon that part of a licensed premises where liquor is sold or kept for sale, except in a dining room or dining lounge, is guilty of an offence against this Act".

The Certificates of Conviction relating thereto are relevant. The licensees were charged with permitting minors on the premises. No evidence was given with respect to the disposition of these charges.

During the Board Hearing the Chairman stated:

"We have in the past accepted court conviction notices as sufficient authenticity as to the charge of a 16-year-old child found on a licensed premises and we have a notice of court conviction, we have accepted that as satisfactory evidence of the situation in case".

The Tribunal is of the opinion that the production of a Notice of Conviction is not in itself conclusive in dealing with allegations against third parties. It is true, as counsel for the licensees admitted, "it is evidence on which the Board can act". We do not discount the significance of a conviction, but we believe that it must be at times viewed circumspectly. This does not mean that the Tribunal endorses a multiplicity of actions; each situation must be determined on its own.

The Tribunal considered the second allegation that the licensees or their employees did supply liquor to persons under the age of 18. With reference to this allegation, the relevant statutory provision is Section 56 (2) of the Liquor Licence Act RSO 1970 C250 as amended, namely,

"56 (2) No liquor shall be sold or supplied to a person who is apparently under the age of eighteen years, and in any prosecution for a contravention of this subsection the justice shall determine from the appearance of such

person and other relevant circumstances whether such person is apparently under the age of eighteen years."

A definition of 'to supply' is 'to provide or to furnish'.

The Tribunal would have no hesitation in a finding of supplying of liquor based on inferential and circumstantial evidence. A lounge is a facility for the purpose of supplying liquor. Persons generally resort to a lounge to be supplied with liquor. Where there is an appearance of the supplying of liquor having taken place, or a consequence of liquor having been supplied is evident, it can reasonably be inferred that this was done.

Noting that the Board made reference only to the staggering of Mike Irvine, we make no finding with respect to the allegation that the licensees or their employees supplied liquor to Michael Irvine and James Robichaud. No evidence of any direct action of supplying was placed before the Tribunal.

It has been said in respect of a charge under an English statute forbidding the "supply" of intoxicating liquor on Sunday, "He would have been supplied if it had been placed on a table...before him". Constable Slack admitted he did not know to whom the glasses belonged, and it appeared that he had made no enquiry about them. The constable had no discussion with anyone about the supplying or serving of liquor to the 2 males, or about the length of time they were there (other than with the 2 males). The Tribunal expresses the opinion that it would be a useful procedure if arresting officers were to investigate such incidents on the spot more fully.

Further, with respect to the allegation that the licensees supplied liquor to minors, we make no finding in this regard in respect to Sherry Tompkins and Leslie Foreman. There is no evidence as to the supplying of liquor other than the presence of a bottle on the table at which the 2 were. Again, it would have been useful if a more extensive investigation had been made.

There is the third allegation that the licensees supplied liquor to intoxicated persons during the night of April 4th to 5th, 1976. The relevant section is that of the Liquor Licence Act 1975, S. of O. 1975, C.40, namely,
"44. No person shall sell or supply liquor or permit liquor to be sold or supplied to any person in or apparently in, an intoxicated condition."

That night Sgt. Harris of the Hamilton Regional Police was making a check of the Tap Room lounge which he entered about 1:10 a.m. There were 70 to 80 persons present. He noted a female slumped over a table with 2 glasses of beer in front of her. He concluded that she was in an intoxicated condition. He remained only a very few minutes, for he concluded also that the atmosphere was 'volatile'.

To Sgt. Harris it appeared that 90% of the persons were intoxicated. The only abnormal conduct he described on the part of anyone was that as he was leaving he saw 3 men slumped over tables. It may be that the patrons had been drinking considerably; that they were, in common parlance, 'high'. However the scene in the eyes of 2 of the patrons - husband and wife, who gave evidence, was that of one where the persons were having a good time. This difference illustrates the great difference of opinion of what constitutes 'intoxication'. In the matter of a few minutes, Sgt. Harris returned with a substantial number of police officers who carried out what might be described in common parlance, a raid. The woman slumped over the table had gone. Benjamin Smith who, according to Sgt. Harris, had passed out, was arrested. He had 2 full glasses of beer in front of himself, and had urinated in his trousers. Two other males were arrested. All 3 were physically taken out. It appears that 2 had to be assisted; one resisted. The scene became one of chaos and pandemonium as surprised patrons could not comprehend what was taking place.

The occurrence that night and the behavior of the police was taken to be so unusual that the band leader who had considerable experience in licensed establishments, and the 2 patrons earlier referred to who were regularly at the Cecil Tavern attended at the police station within a day or so to file written statements of complaint. The disposition of the complaints is not known.

Though some 7 or 8 patrons were dealt with that night, three males, Benjamin Smith, Raymond Larose, and Floyd Doxtator referred to herein, were convicted of being in an intoxicated condition.

The licensees were convicted on 2 counts of supplying liquor to persons in an apparently intoxicated condition. The convictions are under appeal.

The allegations herein respecting the conduct of the licensees or their employees on the night of April 4-5, involves a consideration of the words "persons in or apparently in an intoxicated condition".

A dictionary definition of the word intoxicated is "affected temporarily with diminished control over the physical and mental powers".

It is common knowledge that there are stages of intoxication, for example, the first stage -

"the drinker becomes excited, talkative, perhaps giddy and unsteady on his legs, although not incapacitated from performing all his duties"
Reg. v. McLean (1899), 3 C.C.C. 323

It has also been said:

"In ordinary parlance, of course, there are degrees of intoxication - dead drunk, staggering drunk, slightly drunk, etc."
American Automobile Ins. Co. v. Dickson [1942] 4 D.L.R. 220; 9 I.L.R. 178 (C.A.) affirmed [1943] S.C.F. 143; [1943] 2 D.L.R. 15; 10 I.L.R. 38

It has also been held

"Whenever a man is under the influence of liquor, so as not to be entirely himself, he is "intoxicated"; although he can walk straight, attend to his business and not give any outward and visible signs to the casual observer that he is drunk, yet, if he is under the influence of liquor so as not to be himself, so as to be excited from it and not to possess that clearness of intellect and that control of himself that he otherwise would have, he is intoxicated".
General Casualty Insurance Co. v. Lambert Insurance Co. of Paris [1930] 3 D.L.R. 1007 [1930] 2 W.W.R. 548; 43 B.C.R. 133

However, where it is a question of one person assessing another's state we are of the opinion that:

"it may be prudent to confine the application of the word 'intoxicated' to cases where recognizable symptoms of it are observable".
Earnshaw v. Dominion of Canada General Insurance Co. [1943] O.R. 385 (C.A.) per Robertson, C.J.O. at p. 398.

There is no fixed line before which one is sober and after which one is intoxicated. The extremes of course present no difficulty, but lesser degrees are also culpable.

"Intoxication is the stupified condition of a person who has imbibed alcoholic liquor in sufficient quantity to make him lose totally or partially the use of his mental or nervous faculties. To be intoxicated in the legal sense, it is not necessary to be dead drunk any more than to be ill it is necessary to be dying. It is sufficient that an individual be affected by alcohol to the point of no longer having his normal control, his judgement or, in a word, that he no longer has the use of all his intellectual or physical faculties".
 Desbiens v.R. (1951) 103 Can. C.C. 36 per Bienvenue, J., at p. 41.

The Tribunal holds that a person is intoxicated:

"..when as a result of his consumption of intoxicating liquor, his physical or mental faculties, or his judgement are appreciably and materially impaired in the conduct of the ordinary affairs or acts of daily life".
 R. v. Ormsby [1945] N.Z. L.R. 109 per Fair, J. at p. 109;

We find that Benjamin Smith's condition as described by Sgt. Harris clearly indicated he was in an intoxicated condition and we find further that the licensees or their employees did supply Benjamin Smith with liquor. The glasses of beer at his place clearly related to him, and in the lounge it may be inferred that they were placed there by the licensees or by their employees. We make no such findings in respect of anyone else on the 5th April, 1976.

At the Tribunal hearing, 2 inspectors of the Board gave evidence of their consecutive inspections of the premises during the full 7-year period of management by Messrs. Cvetkovic. Their assessment, which we accept, was very favorable to the licensees. The licensees under trying circumstances, compounded by the disappearance of other licensed establishments, had during their term of operation made substantial progress in weeding out undesirables and bringing order to a difficult situation. This is commendable. However, being licensed requires no less a standard than was striven for by them and indeed an even higher one than had been in fact attained. Their standard still allowed 4 persons under 18 to be permitted to be on the licensed premises on 2 occasions within a 24-hour period, and allowed Benjamin Smith to be supplied with liquor while intoxicated. That hundreds of others had been attended to under the law is again commendable but not decisive; the responsibility placed by the legislation allows for no

exceptions. It may be that the occurrences we have dealt with were lapses or that the licensees had on these occasions let their guard down. That does not excuse them or lessen their responsibility.

The Tribunal is of the opinion that the licensees are sincere and hard working in their attempt to operate under difficult circumstances, an orderly establishment for the relaxation and enjoyment of their particular clientele. It is clear it will be necessary for them to avail themselves of all techniques and assistance necessary to achieve and maintain the standards required by the Act and Regulations thereunder.

The Tribunal is of the opinion that "past conduct" of the kind exemplified by the findings of the Tribunal in respect of the action of the licensees relating to Mike R. Irvine and James Robichaud, Shirley Tompkins, Leslie Diane Foreman, and Benjamin Smith is of the kind envisaged by Section 6 Subsection (1) Paragraph (d) of the Liquor Licence Act 1975.

The Tribunal confirms the Order of Suspension of the Board respecting the lounge licence equivalent to the period stated and directs the Board to determine the exact time limits thereof.

The Tribunal revokes the Board's Order of Suspension of the Dining Lounge Licence, there being no grounds which would warrant such action in that all the allegations and evidence in respect thereto related to the lounge. Indeed it is a fact that when the 2 minors, Irvine and Robichaud, wished to be served liquor here they were refused and had to leave. *

*NOTE: The above decision was appealed to the Supreme Court of Ontario (Divisional Court).
The appeal had not been concluded
at the time of this publication.

LINCOLN PARK INN, Huntsville

Dining Lounge Licence and Lounge Licence
issued to
Chelsea Hotels Limited
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: S. A. GRANNUM representing the Liquor Licence Board
AGENT: DAVID CLARK representing the Licensee

DECISION: 22 April, 1977

The licensee, Chelsea Hotels Limited, is the operator of Lincoln Park Inn, an 18-room hotel in respect of which is issued as of March, 1974, a dining lounge and lounge licence for a seating capacity of 205. It was built in the spring of 1973 at a cost exceeding \$265,000. The hotel relies on the influx of tourism in the Muskoka area for its viability. The staff has at times been from 10 - 15 persons.

The enterprise has had difficulty for a number of given reasons stated to be beyond the control of the licensee, in becoming financially viable. This is reflected in the history of the paying of accounts with the Liquor Licence Board.

The account of the Licensee with the Board was as follows:

As of 31 March, 1975 there was owing the sum of \$182.51; this was paid during the ensuing period.

From April 1, 1975 to 3 January, 1976 there was incurred the sum of \$290.19 (due under regulations passed under the authority of Section 87 (f) of the Liquor Licence Act R.S.O. 1970 CAP 250) in respect of which was paid \$50 recorded as of September 7, 1976 and \$100 recorded as of March 9, 1977 leaving a balance unpaid and owing in respect of this period in the sum of \$140.19.

From January 4th, 1976 to February 28, 1976 there was incurred the sum of \$28.02 (under Section 59 Subsec. 7(a) and (b) of Reg. 1008/75 passed under the authority of Sec 40(g) of the Liquor Licence Act 1975) which remains unpaid and owing.

Accordingly, as of the date of the Board's hearing

and the Tribunal's hearing, the indebtedness of the licensee totalled \$168.21 (\$140.19 + \$28.02). This is acknowledged on behalf of the licensee.

On March 25, 1976 the following letter was written

" Re: Non-payment of Gallonage Fees
 in the amount of \$256.67

This is to advise that our records indicate that as of the above date, monies in the amount of \$256.67 is owing to this Board for gallonage fees.

It is a term and condition of a licence that fees required for liquor purchases shall be paid by a licence holder not later than ten days following receipt of the statements of fees payable in respect to such purchases. (section 59, subsection 10, of the Regulations of the Liquor Licence Act, 1975).

Therefore, if payment is not immediately received it will be our intention to recommend to the Board the suspension or cancellation of your licence unless you can advise of any extenuating circumstances by return mail."

The amount shown (\$256.67) was the amount owing up to November 8, 1975 and was incurred prior to the effective date of Section 59, namely, the 2 January, 1976.

On Aug. 10, 1976, the following letter was written

" Re: Non-payment of Gallonage Fees

Our records indicate that as at the above date there is an outstanding account in the amount of \$318.21 owing to the Board for gallonage fees incurred prior to April 1, 1976.

It is a term and condition of a licence that fees required for liquor purchased shall be paid by a licence holder not later than ten days following receipt of the statement of fees payable in respect to such purchases. (Section 59 subsection 10 of the Regulations).

Therefore, if payment is not immediately forthcoming, we will be obliged to recommend to the Board suspension or cancellation of your licence.

If the information contained above is not accurate or if you require any further information please feel free to contact us."

The amount shown (\$318.21) was the amount owing up to 28 February, 1976. Of this amount only \$28.02 was incurred after the effective date of Section 59, namely, 2 January, 1976. The sum of \$50.00 was paid and recorded as of September 10, 1976. The enclosing letter stated that "the hotel is suffering serious financial crisis".

On November 10th, 1976, a 'Notice of Proposal' to suspend the Dining Lounge and Lounge licence was issued to Chelsea Hotels Limited relative to the Lincoln Park Inn, Licence Number 14240, for the following reasons:

"The sum of \$268.21 is owing to the Board for gallonage fees incurred prior to April 1st, 1976 and although requested by the Board you have failed to pay the said monies as required by Section 59, subsection (7) of Regulation 1008/75 under the Liquor Licence Act 1975".

On November 24th, 1976 by letter the representative of the licensee, Mr. David Clark, requested sympathy for "the financial distress of the company" and agreed "to the payment of the outstanding tax arrears beginning in the new year, 1977 when at such time we hope that our business will pick up".

The proposed hearing dealing with the suspension to be held on Tuesday, January 11th, was cancelled in view of an agreement by telephone with Mr. Clark to pay \$150 on the account and the balance in thirty days. A letter dated January 11th, 1977 enclosed a cheque for \$100 which was returned as a result of insufficient funds.

By letter of Feb. 7, 1977 the Board advised the licensee of its NSF cheque and requested a certified cheque for its amount and continued,

"also, as stated in our letter of January 17th, 1977 addressed to the attention of Mr. David Clark, an extension until March 18th, 1977 has been given to pay the balance of gallonage fee (\$168.21 owing to the Board, or the licence will be automatically suspended".

By letter of February 8, Mr. Clark advised that since the date of the cheque "the hotel has received no income revenue whatsoever".

On February 16th, 1977, Mr. David Clark on behalf of Lincoln Park Inn, was granted a further two weeks to rectify the \$100 NSF cheque with the understanding that the balance of \$168.21 would be paid not later than April 1st.

A Board letter of February 18th stated,

"The balance owing to the Board in the amount of one hundred and sixty-eight dollars and twenty-one cents (\$168.21) for gallonage tax shall be paid by April 1st, 1977

There will be no further extensions to the above quoted date. Failing to comply will result in the Board carrying out its 'proposal' of November 10th, 1976 to suspend your licence".

On March 7th, 1977, the Board acknowledged receipt of a cheque for \$100 correcting the matter of the NSF cheque, leaving a balance of \$168.21.

Mr. Clark asked to meet with the Chairman on April 12th to discuss the unpaid balance. At this meeting attended by Mr. J. A. Brule, also a Board Member, Mr. Clark asked for a further extension for payment in the light of the action likely to be taken by a creditor, the Industrial Development Bank, on 3 May, 1977. He offered to pay \$80 in cash on account. The Board did not grant this further extension because of its concern that there would be "little or no chance of recovery of the monies owing" and issued an order:

"In view of the fact the sum of One Hundred and Sixty-eight dollars and twenty-one cents (\$168.21) is still owing to the Board for gallonage fees incurred prior to April 1, 1976 as required by Section 59, Subsection (7) of Regulation 1008/75 under the Liquor Licence Act, 1975, the Board therefore orders:

that the Dining Lounge and Lounge Licences issued to Chelsea Hotels in respect of the Lincoln Park Inn be "suspended commencing at the closing hour on Saturday, April 16th, 1977 and to remain in effect until the said sum is paid in full".

The first issue to be determined is the jurisdiction and authority of the Liquor Licence Board to suspend. The Tribunal finds that the Liquor Licence Board does have that authority.

Under the Liquor Licence Act of 1975, Section 11 Subsection (3) the Board may suspend a licence where the licensee is in breach of a term or condition of the licence. Subsection 10 of Section 59 of Ontario Regulations 1008/75 which was in effect during the period of January and February 1976 (until amended by Ontario Reg. 259/76) read during that period as follows:

"It is a term and condition of the licence that the fees required under Subsections 7 and 8 for liquor purchases shall be paid by the licence

holder not later than 10 days following receipt of the statements of fees payable in respect of such purchases".

It is clear that the non-payment after 10 days of the amount of the statements in respect of the amounts making up \$28.02 was a breach of the condition of the licence.

The earlier incurred indebtedness of the \$140.19 must be examined in the light of the former Statute. Under the Liquor Licence Act Revised Statutes of Ontario 1970, Chapter 250 there was provision in Section 47.

"The Board may suspend any licence or permit issued under this Act and shall give reasons therefor at the time of the hearing. R.S.O. 1970, c.250, s.47.

The Interpretation Act R.S.O. 1970 CAP 225 has Section 14 which appears under the sub-heading of "Repeal, Amendment and Consolidation", and which states in part as follows:

(1) Where an Act is repealed or where a Regulation is revoked, the repeal or revocation does not, except as in this Act otherwise provided, ...

(c) affect any right, privilege, obligation, or liability acquired, accrued, accruing, or incurred under the Act, regulation or thing so repealed or revoked;

(e) affect any investigation legal proceeding or remedy in respect of any such privilege, obligation, liability, penalty, forfeiture or punishment.....

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Act, Regulation or thing had not been so repealed or revoked."

Accordingly the Board did have the authority to take action with respect to the indebtedness - the obligation of \$140.19. The repeal of the Liquor Licence Act R.S.O. 1970 CAP 250 did not affect the obligation and liability of the licensee incurred under that Act in this regard.

The Interpretation Act kept that obligation alive, as well the continued power of enforcement in respect thereof. In effect, the Interpretation Act prolonged the life of the Liquor Licence Act R.S.O. 1970 CAP 250 in regard to this obligation and its enforcement.

Let us look at the action which was in fact taken by the Board. The Notice of Proposal issued with reference to the dining lounge and lounge licence in respect of the establishment was for suspension for the following reasons.

"The sum of \$268.21 is owing to the Board for gallonage fees incurred prior to April 1st, 1976. (Note: the amount was reduced before the hearing at the Board to \$168.21).

And although requested by the Board you have failed to pay the said monies as required by Section 59 Subsection 7 of Regulation 1008/75 under the Liquor Licence Act 1975".

The 'said monies' required under Section 59 Subsection 7 were in fact in the amount of \$28.02. The decision issued by the Board referred to the monies owing (\$168.21) as required by Section 59 Subsection 7 of the Regulations.

What the Board should have done in the opinion of the Tribunal, is to issue both the proposal and what they found in respect thereof, in two parts, one relating to the indebtedness and obligation under the old Act and one related as it existed for two months under the Liquor Licence Act of 1975.

Mr. Grannum for the Board expressed a view that the obligation under the old Act "was carried forward" in some way under the new regulation. We do not concur, the two items are completely separate and the obligations under the old Act are not carried forward under the language of Section 59 of the new Regulations. Had the Lieut-Gov. in Council so intended, there could have easily been included a paragraph to that effect. However, it is of no consequence in law in this instance because the Interpretation Act is applicable so that the public obligation has not been discharged.

The position taken by the agent for the licensee as to the authority of the Board in this regard would appear to have been based on reading Section 59 of the Regulations after amendment and because of an unawareness of the effect of the Interpretation Act. The Tribunal finds that there is legal authority by the Board, properly exercised, to issue an Order of Suspension.

The Tribunal makes no ruling on the technicality of the expression by the Board of its authority; that is, we make no finding in respect of the consequences of the Board having given as a reason for suspension a sum of money which is really not the exact amount incurred and owing under the particular section of the Regulations relied upon. In the light of the opinion which the Tribunal will express it will not be necessary for the Tribunal to make a finding in this regard. Apart from confusion

we do find that the licensee was not prejudiced in stating his position.

The Board in its written decision did not state why it felt that a suspension should in fact be applied. However, in respect of the request for a Stay of the Suspension, it was presented to the Tribunal on behalf of the Board that a Stay of the Suspension is financially not in the public interest since the arrears are in fact outstanding taxes or public funds. It can be clearly inferred that the Board was of the opinion that the imposition of the Suspension was in the public interest.

During the course of the proceedings before the Tribunal, Mr. Grannum stressed the fact that there is a responsibility on the Liquor Licence Board to ensure that funds which are owing to the public purse (and I use a general term - it little matters whether they be taxes, fees, premiums, or the like) are paid - that there is an obligation on the Board to take such measures as it sees fit for recovery of the funds. The Tribunal agrees with this general principle and recognizes the Board's concern. As Mr. Grannum pointed out, not only is it responsible generally in the discharge of its duty but no doubt the Provincial Auditor could call upon it to explain why it had not taken all the legal measures available for an enforcement of the public debt. Accordingly, we find that the action of the Liquor Licence Board was neither arbitrary nor inconsistent. There is a responsibility and duty owing upon it, and it saw fit to carry it out.

The authority of the Tribunal is set out in the Liquor Licence Act 1975. Under Section 15, Subsection (3) the Tribunal may by order confirm, alter, or revoke the decision of the Board. For such purposes the Tribunal may substitute its opinion for that of the Board. The Tribunal is of the opinion that it is not in the public interest that a Suspension of the licence should take place. The concern of the Board was with the recovery of public funds. There is nothing before the Tribunal which would indicate that the imposition of a Suspension would enable the recovery of those funds in the light of the circumstances of the establishment as existing at the present time. The suspension would not necessarily ensure payment of the funds, indeed, it at this time might have the opposite effect.

There is nothing before the Tribunal which would indicate any lack of desire on the part of the licensee to pay the indebtedness. The licensee is presently in a very severe financial condition: it has an indebtedness outstanding to the Industrial Development Bank in the considerable sum in the neighbourhood of \$249,000, a major indebtedness to a bank of some \$6,600, and judgments outstanding in the neighbourhood of \$12,000.

The Tribunal recognizes that the appellant had in the past paid something when pressure was applied. The pressure of an ongoing suspension would now be of little avail; the licensee is presently not in a position to pay the \$168.21 necessary to remove the suspension. Now with only 3 persons engaged in the hotel, the income is almost nil, the hotel being operated on a day-to-day basis.

The agent for the licensee has still a modicum of optimism about the ability of the establishment to carry on. In order to do so necessary arrangements must be made with the creditors. It may readily be assumed that an outstanding Order of Suspension would have very severe effects on the possibility of any successful negotiation. In the operation of an establishment such as this, the licence is a crucial matter, a fact generally known and generally accepted. The Tribunal is of the opinion that were the Suspension to continue, a small hope of re-activation and continuation could easily be extinguished. It would then follow that the public purse would not really gain it would not recover the indebtedness owing to it.

The Tribunal does bear in mind also that the successful re-activation and re-establishment of the business might be of benefit to the community as a whole in the matter of employment and business trade generally in regard to supplies. It may be that that kind of employment might be continued on by a successor should the present licensee be unable to carry on. That again is a matter for the future and we have no way of knowing whether the establishment would continue as an operating establishment under anyone else, or whether it would just close its doors, the losses falling upon those who may be involved.

Mr. Grannum, at this hearing referred to the power of the Board to take action under a combination of Section 11 and and Section 6 (1) of the Liquor Licence Act. Under Section 11 Subsection (3) the Board may suspend a licence for any reason that would disentitle the licensee to a licence under Section 6. Under Section 6 an applicant would be disentitled to a licence if he did not meet the financial test of Subsection (1) (a), i.e.

"(1) having regard to his financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of his business;"

We did not make any finding in that regard because the Tribunal determined it would not be fair to the appellant to have to meet at this stage of the proceedings such a new proposal, although the evidence which has been placed before the Tribunal does show the critical financial position of the appellant. This is not to say that the Board cannot at some future time issue a Notice of Proposal for a Suspension based

on those grounds. The orderly and normal procedure under the Act which has been carried out in this instance could again be followed.

The Tribunal has directed its attention only to whether the Order of Suspension should be based on the non-payment by the licensee of the monies owing to the Board, and as set out above, has concluded in the negative.

The Tribunal hereby revokes the decision of the Liquor Licence Board suspension dated the 12th day of April, 1977.

KINGSWAY HOTEL, Chatham

Lounge Licence
issued to
Nick and John Holdings Limited
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C. CHAIRMAN
JOHN W. ERICKSON and
JACK C. SIM, MEMBERS

COUNSEL: KENNETH R. HARRIS representing the Licensee
S.A. GRANNUM representing the Liquor Licence Board

DECISION 27 July, 1977

Nick Stempowicz, an electrician by trade and John Krzyczewski, a body man by trade, formed a corporation on April 23rd, 1975 under the name of Nick and John Holdings Ltd. hereinafter referred to as the Licensee. The Licensee acquired the Kingsway Hotel, 429 Grand Avenue East, Chatham and commenced business on or about the 21st of July, 1975.

The establishment consists of some 17 hotel rooms rented on various terms. The licensed premises consist of a lounge in 2 sections with seating capacities of 105 and 62, and a dining lounge in 2 sections with seating capacities of 81 and 61. There is one service bar. There are 4 entrances by which access may be obtained to the lounge sections.

Convictions were registered against minors for offences under Section 45 (4) of the Liquor Licence Act.

"No person under the age of eighteen years shall enter or remain on premises in which the sale of liquor is authorized except those classes of premises that are prescribed by the regulations"

in respect of the same premises on the following days:
(note trial dates follow)

	February 7, 1976	(February 9, 1976)
	July 21, 1976	(August 20, 1976)
2 on	August 26, 1976	(November 29, 1976)
2 on	November 20, 1976	(November 22 and 23, 1976)
2 on	December 9, 1976	(January 12 and 21, 1977)

2 on December 10, 1976 (January 13 and 14, 1977)
 January 25, 1977 (February 14, 1977)
 2 on January 29, 1977 (March 1 and 29, 1977)
 March 3, 1977 (March 8, 1977)

In respect of one of the occurrences of the 9th and 10th of December, 1976, the licensee on the 4th of April, 1977, was convicted under Reg. 1008/75 Section 5 (5)

"Subject to Section 46, no holder of a licence shall permit any person under, or apparently under the age of eighteen years to enter or be upon the licensed premises".

and fined \$500 in each instance.

On the 19th of April, 1977, the Board issued a proposal to suspend for a period of thirty (30) days the liquor licences issued. The proposal was based on Section 6 (1) (d) of the Liquor Licence Act 1975 in that

"the past conduct of the licensee affords reasonable grounds for belief that he has not carried on business in accordance with law by permitting persons under or apparently under the age of eighteen years to enter or be upon that part of the licensed premises licensed as a lounge".

After a hearing the Board found that

"several persons under the age of eighteen (18) years were convicted of entering on that part of the Licensee's premises licensed as a Lounge between the period February 7, 1976 and December 10th, 1976; further, notwithstanding the said convictions of which the licence-holder knew or ought to have known, the licence-holder was on the 4th of April, 1977, convicted in Provincial Court, County of Kent, of unlawfully permitting persons under the age of eighteen (18) years, namely, Bonita Sharrate and Rene Christiansen, to enter and be upon the licensed premises on the 9th and 10th of December, 1976 contrary to Section 5, subsection (5) of Regulation 1008/75 under the Liquor Licence Act 1975.

and ordered

"that the 'lounge' licence granted to Nick and John Holdings Limited in respect of the Kingsway Hotel be SUSPENDED for the period commencing at the opening hour on Monday, June 6,

1977, and to continue in effect until the opening hour on Monday, June 27, 1977".

i.e. a suspension related to 18 business days.

It is clear that there were a variety of problems in the operation of the establishment from the outset, particularly in respect of and related to minors entering the licensed lounge premises. The hotel became by far the 'number one' problem area in the enforcement district.

It was not disputed that the licensee was in breach of the condition attached to the licence by virtue of Regulation 1008/75 Section 5 (5). However, it was advanced on its behalf that the suspension should not be imposed for a number of reasons.

An inspector of the Liquor Licence Board and an enforcement officer with the Chatham Police Force gave evidence of a number of warnings given to the management and staff of the licensee in respect of the presence of minors, in particular with reference to the occurrences and convictions during 1976. We find that there was more than ample communication to the management, of the problems and their seriousness, and that advice was given to prevent the occurrences. The advice given included an insistence of Age of Majority cards as proof of age and posting staff at each entrance to prevent entry and seating of minors. Management cannot claim a lack of knowledge of what occurred during a considerable period of time. "That there were many nights with no violations" is not sufficient answer.

It is surprising that after being spoken to by the police sergeant after the occurrence on the 9th of December, 2 more offences should take place the very next day (1 in respect of a girl only 16 years of age). Management should have been wary of identification.

The management, because of a combination of inexperience and a hesitancy to take drastic steps because of likely negative effects on business, did not take action that proved effective until the situation reached very serious proportions. This is not to say that management did not take heed of the warnings or that they deliberately continued without any change, the same type of operating techniques they had started with. Indeed, they sought assistance.

However, the actions taken were, under the circumstances, minimal: posting of an Age of Majority requirements sign, and some attempts at control at entrances. These actions were not successful. It appears that either the management was not capable of control by ordinary methods or that the

situation was uncontrollable. For example, suitable personnel could not be hired under the prevailing situation, and staff at that time would not co-operate. Occurrences and convictions continued - some 13 certificates were filed in total.

After the occurrences of December 9th and 10th especially, the management took the foregoing steps. After the occurrences in January, 1977, the management took the drastic step of changing the environment of the operation. They changed the form of entertainment (even cancelling engagements) from 'rock and roll' to 'country western style' music. The step is considered drastic because it appeared that such a change would be likely to bring about not only a change in type of customers but also likely to bring about a considerable reduction in numbers. Also, management began to rigidly accept only the Liquor Licence Board card as evidence of majority. A change in the kind of staff followed. At times the stricture created other difficulties; refusals to accept other forms of identification meant a turning away of what was likely to be legitimate business.

It is to the credit of the licensees that this drastic action was taken some time before the notice of proposal herein was sent out by the Liquor Licence Board.

The drastic action has been successful. There has been a dramatic change in the clientele and in the environment of the establishment. Though there has been a drop in the volume of business, there no longer appears to be a need for the higher number of staff formerly required to keep the premises clear of minors. The major problem would appear to have disappeared. The establishment has moved from the #1 problem spot to being one of the better-run establishments.

Evidence in this case is clear by reason of the numbers of convictions both of minors and of the licensee, that minors have been on the premises contrary to the provisions of the Act and the Regulations.

Problems relating to the presence of minors on licensed premises have been within the public realm for some time, and there has been general concern in this regard. The Tribunal reiterates the Board's concern and the heavy responsibility on a licensee to prevent this taking place. We are dealing with a situation which calls for disciplinary action, not only by reason of the continuing and clear failure of management of the licensee to run the establishment in accordance with the law, but that those who are licensed in this trade will be strongly aware of the concern of the Board and its discharge of responsibility in regulating the trade in accordance with the legislation as passed by the Legislature of Ontario. Especially where the chief ingredient in a licensed industry is

alcohol with all the associated problems that arise, a Board has a right to expect, not a setting forth of the difficulties which are involved in operating a licensed premises, but solutions to these difficulties. This is particularly so in this area where the Board itself is assisting by the provision of Age of Majority cards.

It is clear that the management of the licensee have had a difficult time, yet it is also clear that society and the community have been affected by the failure for whatever reason to carry an operation in accordance with the law.

The personal effect and material self-deprivation of the ownerships in trying to establish a flourishing business are manifest. Long hours had been worked, little pay has been drawn, and family life has been affected.

The Tribunal is mindful of the actions of the management to find solution to their difficulties, of the efforts of the management initially to cope with the situation by staff increases and signs; and there is no doubt as to the desire to have operated an establishment in accordance with the law. The Tribunal is also mindful of the fact that they finally made a drastic and risky change in re-vamping the whole operation and that it appears to have been successful. From being No. 1 in a group of establishments in which there were problems in respect to minors, the establishment in recent months has become an operation which, on the testimony of the Inspector and Sergeant (both associated with enforcement) is described as being run better, cleaner, and one of the better kind. A whole new, older, more mature clientele has been cultivated; the presence of minors has been eliminated.

Counsel for the licensee has suggested that in view of the considerable fines levied on the licensee that a suspension would not only be a double penalty, but a multiple one. However extenuating the circumstances might be, there was in fact a failure to operate in accordance with the statute passed by the Legislature, and for a considerable period of time. The statute does provide for disciplinary action by the Board, apart from what else may be imposed.

Counsel for the licensee has suggested that a fine be levied, claiming that a suspension "would have devastating detrimental consequences". There is no doubt that a further fine, even a considerable one, would not be as hurtful as the tangible loss (estimated on the basis of figures presented to the Tribunal of \$2500 weekly) plus the intangible losses, (e.g. the loss of good competent staff, the going elsewhere of clientele) which could result from a suspension.

The Tribunal in its first consideration of such a

suggestion is of the opinion that it has no jurisdiction to do so, even with the consent of the party against which the fine would be levied.

The Tribunal has noted that the original proposal of the Board was a suspension of 26 business days, and that subsequently, the suspension in the decision was reduced to a period of 18 business days.

The Tribunal hereby alters the decision of the Board to a suspension of ten business days, the commencement and ending of which, the Tribunal directs the Board to determine.

WILLOW BAY RESTAURANT, Township of Wainfleet

Application for a Dining Lounge Licence
by Angelo Mollo
APPEAL FROM REFUSAL TO ISSUE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: S.A. GRANNUM representing the Liquor Licence Board
AGENT: DOMENIC MOLLO representing the applicant

DECISION: 18 October, 1977.

The applicant, Angelo Mollo, has operated a business establishment known as Willow Bay Restaurant on Lakeshore Road, Long Beach, in the Township of Wainfleet, Regional Municipality of Niagara since his acquisition in June, 1975. The applicant, formerly a tailor and butcher generally resident in Toronto, is assisted in the operation of the business by his wife and son, Domenic Mollo.

The establishment consists of 3 parts - a restaurant, a grocery store, and an arcade with a variety of entertainment equipment such as pinball machines, pool tables, and the like. At the side of the restaurant is a parking area for about 60 cars.

The restaurant offering Italian style food and North American style quick food, has been limited to the summer period and in 1977 had a gross value of \$3863.40. The restaurant is frequented in the main by older young persons. The grocery store is in operation from May 1st to September 30, and operates at a break-even point. Some 10 years ago this total establishment operated as a flourishing 'corner' grocery store.

The arcade is a busy place attracting many young persons ranging from the very young to the low teens.

The grocery and restaurant is mainly patronized by persons who come into the area for summer recreation, for camping, or to visit. It is not generally patronized by the residents - summer or permanent - of the immediate vicinity.

By letter of enquiry of 18 January, 1977, the applicant commenced the proceedings necessary in an application

for a dining lounge licence. The application was dealt with at a hearing held, after due notice in the Welland Evening Tribune, on the 5th of April, 1977. Oral and written objections to the application were received. On the 19th of April, 1977, the Board issued a Notice of Proposal to refuse to issue the licence for the following reasons:

1. Pursuant to Section 6 (1) (g) of the Act, the issuance of the licence is not in the public interest, having regard to the needs and wishes of the public in the municipality in which the premises is located.
2. The premises, accommodation, equipment and facilities do not comply with the regulations under the Liquor Licence Act 1975 and in particular Sections 15, 16 (2) and 17.

Following a hearing held on August 8, 1977, where the applicant was represented by his son, Domenic Mollo, the Board issued a decision refusing to issue the licence based on the reason first set out.

The Board had before it the objections theretofore recorded.

The applicant thereupon requested a hearing before the Tribunal. Notice of the hearing to be held in the Village of Wainfleet (in the heart of Wainfleet Township and a few miles from Long Beach) on the 27th of September, 1977, was published in the Welland Evening Tribune on the 9th and 16th of September 1977. At the hearing Angelo Mollo appeared in person, together with his son, Domenic Mollo, who acted as agent, as interpreter, and as witness on behalf of his father.

Wainfleet Township is a typical rural township within the Regional Municipality of Niagara with a population of 6,000 which grows in summer to some 18,000 by virtue of seasonal stays of cottagers and their families, and of campers. Though the number of permanent residents is slowly growing, the bulk are summer only and come from a broad area of the Niagara Peninsula and from the immediate U.S.A. border area from Niagara Falls to Buffalo, New York. There is also a major influx of individuals on weekends and holidays. The attraction is the shore of Lake Erie which forms the southerly boundary of Wainfleet Township. It is here where is situate Long Beach on the Lake Shore Road of which is the Willow Bay Restaurant. In the near vicinity there are about 90 summer residences. Long Beach Conservation Park is on both sides of that road and is within a short distance of the restaurant.

The general atmosphere of the area is family-oriented, with many young children about and the life style is that associated with leisurely summer living.

Both the appearance and operation of this establishment came under severe criticism of those who expressed their objection. In the preliminary report as of March 1, 1977 of the inspector of 16 years' experience and responsible for a territory considerably beyond Wainfleet, it is stated, "I don't think I have seen a building inside and out that is in such very, very poor condition". In the appeal memorandum presented to the Tribunal, the premises are described on behalf of the applicant as "It is completely renovated on the inside and out, re-furnished, re-decorated, etc....it is a very clean restaurant, it has a new septic system, new plumbing, new electric wiring, new ceiling, new flooring, insulation, etc..... it is completely refurnished from the outside also.....". However, objectors at the Tribunal hearing used the harshest of language in describing the premises even after the changes, pointing out what was, in their opinion, serious deficiencies.

The standard of facilities appear to be short of that required by the regulations, and they and the appearance are far below the standard expected by those who expressed their opinions, of a licenced establishment. A good deal of emphatic and specific complaint was made of the operation and of the lack of supervision of the young persons inside and outside of the premises and in particular in conjunction with their cars and motorcycles. Unpleasant behavior and noise were a continuing theme of objectors.

It was stressed that problems of behavior would be compounded since a dining lounge could legally be entered into by minors. The feeling was that if the management of the unlicensed premises left much to be desired, what would be the situation with licensed premises.

The Tribunal had before it the 13 written objections made before the Liquor Licence Board and which formed part of the Board's record of proceedings. Up to the commencement of this hearing the Tribunal received 6 letters of objection in response to the Tribunal notice. The writers of 4 letters had already written in objection to the Board and reiterated their opposition, and 2 were new. At the Tribunal hearing 15 persons appeared to give testimony in objection to the application. Of these 4 had written letters and the balance were registering their objection for the first time. A total of 37 persons registered their objection - 18 reside in Wainfleet, 8 in the Region, and 11 in nearby places of U. S. A.

Mr. J. R. Goodwillie gave testimony as representing the Long Beach Resident Property Owners Association which has

a membership of 100 out of a possible 225 qualified to be. He explained that, because of time constraints and the scattering of summer residents, it had not been feasible to have the brief ratified by the membership prior to presentation. The brief had been approved by the executive and was summarized as follows:

"The proposed outlet is too close to the lakeshore residential area.

The added traffic to the lakeshore road is undesirable.

The indirect influences such as noise, disturbances, hazards to private properties, influences on local children, etc. is unwanted.

The intent of the Township of Wainfleet by-law would be contravened and this Tribunal should not influence or recommend any changes to this by-law.

There is no need for such an outlet at this time.

There appears to be inadequate parking facilities for the proposed outlet. Before any favorable response by this Board, our Association would like assurances that the proposed facilities can be adequately renovated to meet all standards.

This is a summer family area.
Let's keep it that way".

Those appearing seemed to reflect a cross-section of the community ranging in age and background, with married couples in the majority. All supported the above brief and in addition, some voiced particular opinions in objection.

Mr. F. G. Goldring of Fonthill, Chairman, Niagara Peninsula Conservation Area Authority which manages the Long Beach Conservation Area, appeared in his personal capacity, explaining that Long Beach Park camping was restricted to a family basis, and expressing his apprehension of difficulties in traffic and behavior that might arise from a licensed outlet in such an environment.

The applicant testified in denial of criticisms levelled. After gross figures of possible business were elicited, he stated that of \$14,000 gross, he anticipated a net of \$10,000. When queried as to how this would be achieved he took the position that it was his private affair. The Tribunal made no ruling in the matter. As to deficiencies, he said that all

requirements of the regulations would be met if he was assured of a dining lounge licence.

On behalf of the applicant there was presented a petition arranged for by his son, Domenic, in support of the application. There were 57 signatories - some 18 were from out of the Township, the remainder from inside. With the exception of 2, the persons were at a distance greater than those who objected. There was not in the brief any expression as to why their needs could not be attended to by the premises already licensed.

Within the Township of Wainfleet there are 6 licensed establishments - 3 golf clubs, 1 hotel, and 2 restaurants. The 2 closest are the Erie Breeze Golf Club 3/4 of a mile west on the Lakeshore Road and Tong's Tavern 2 miles east on the Lakeshore Road. The remaining 4 are at various scattered locations at distances of 6 to 13 miles. There are 9 other licensed establishments (including 4 golf clubs and 2 legion halls) in the Townships bounding on the north, and a substantial number in the remaining municipalities of the Region, Port Colborne, Welland, St. Catharines, etc. It was indicated that Tong's Tavern which was a substantial establishment valued in the hundreds of thousands, was having financial difficulties due to a lack of business and had barely survived the past summer. There are other unlicensed food outlets in the area.

The wording of the governing Statute - The Liquor Licence Act (in Section 6) clearly indicates that there is an entitlement to a licence, i.e. an Applicant is to be entitled to be issued a licence unless he falls within certain exceptions.

The issue before the Tribunal is the exception to entitlement set out in Paragraph (g) "where the issuance of the licence is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located". It is a matter of judgement for the Board to determine what is 'in the public interest' and the basis of this is a "regard" by the Board "to the needs and wishes of the public in the municipality". The determination is ordinarily not an easy one.

By a vote held 4 December, 1976 the voters of the Township of Wainfleet expressed themselves in favour of consumption on licensed premises with food available, by a vote of 1224 to 609 out of an electorate of 3033. This is not, however, the expression of needs and wishes referred to in Paragraph (g) and it is incumbent upon the Board to have regard to the needs and wishes of the public in the municipality in respect of each individual application. Since there is no machinery available under the Act for a scientific determination of needs and wishes the Board can only proceed on the material which is placed

before it.

The Board has heard those directly affected and in addition, oral observations of persons and resorted to the receipt of letters. The Tribunal has emulated the Board and also accepted the same presentation as well as (again in this case) receiving a petition. We believe all these methods necessary as the fullest and a convenient method of citizen input. It is to be noted that under Paragraph (g) in determining the public interest, regard is to be had to both 'needs' and 'wishes' and weight must be given to each of these factors. Consideration cannot be restricted to that of 'needs' or 'wishes' alone, not to either of these matters from the point of view of one particular group.

The legislation has not defined any of the terms 'public interest', 'needs', 'wishes', 'public in the municipality'. In respect of the latter, the legislation has not required either residency of any kind or property ownership. These matters are therefore left to be determined by the Board (Tribunal).

In the determination of the 'public in a municipality' the Tribunal holds that residency within a municipality is not a condition precedent to the validity of an expression as to 'needs' or as to 'wishes'. However, there must be some relationship between such a member of the public and the municipality. In another hearing the Tribunal has considered persons working in a municipality as being part of the public in the municipality. The Tribunal finds that there is this relationship in all the objectors with the municipality of Wainfleet whether by summer residency or permanent residency. It would appear that there was no significant relationship by some 16 who signed the petition of support from outside the municipality. It is likely because of their residency in an area (until recently dry) where there were as yet no licensed establishments, that the latter became signatories. Objectors had commented that "liquor outlets tend to draw customers from outside the immediate area" and "these 'transients' only add to an already over-crowded summer condition". However, the Tribunal finding would be no different even if they were to be included in the 'public within the municipality'.

The Tribunal is not proceeding on the basis that the matter of needs and wishes should be determined by a head count of those expressing opinions for and against. That is not a requirement imposed upon the Board (Tribunal).

The Tribunal finds a substantial and strong expression of objection to the application and the weight thereof far exceeds the expression of support. The 'wishes' are strongly in the negative to the issuance of the licence applied for.

Further, no needs have been demonstrated: on the contrary, strong expressions have been made of no need. The Tribunal finds no needs that should be satisfied in the public interest.

The Tribunal finds that the issuance of the licence applied for is not in the public interest having regard to the needs and wishes of the public in the municipality in which the Willow Bay Restaurant is situate. Accordingly, the prima facie entitlement of the applicant under Section 6 is negated by the exception set out in Paragraph (g) thereof.

THE TRIBUNAL THEREFORE ORDERS that the decision of the Liquor Licence Board on the 8th day of August, 1977, to refuse to issue a dining lounge licence to Angelo Mollo, Applicant, carrying on business as Willow Bay Restaurant in the Township of Wainfleet, be confirmed.

STAFFORD TAVERN, Toronto

Lounge Licence
issued to
J & P Hotel Holdings (Toronto) Limited
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON and
BARBARA J. SHAND, MEMBERS

COUNSEL: L. VASILAROS representing the Licensee
S.A. GRANNUM representing the Liquor Licence Board

DECISION 25 November, 1977

J & P Hotel Holdings (Toronto) Limited is the licensee of the establishment known as Stafford Tavern located at 940 Danforth Avenue in Toronto. Mr. J. Panagiotopoulos is the beneficial owner and is in charge of the management.

The business was acquired first for \$115,000 and subsequently the building for \$200,000. When the licensee acquired the establishment in October, 1974 it was classified as a Public House with a public house licence for the sale and consumption of beer. After extensive renovations in November, 1976 at a cost of \$80,000 the establishment was re-classified (upgraded) and a lounge licence issued for the sale and service of liquor.

The establishment is a 2-storey building with each of the floors licensed under a lounge licence. The main floor has a capacity of 156 and the second floor a capacity of 69. On the ground floor is a snack bar and on the second floor are dining facilities with a menu of Greek specialty foods. There is entertainment of western and country style music on the main floor and Greek entertainment on the second floor. The clientele on the ground floor is international in character; on the second floor, generally of Greek origin. Mr. Panagiotopoulos is assisted in the operation by his wife and son in addition to hired staff.

There are about 4 licensed establishments (3 lounges) east of the premises and more (1 lounge to the west.

Except for the suspension of the licence by the liquor Licence Board in July, 1977 which is the subject of this appeal, the Board has not suspended the licence of this establishment during the time of ownership thereof by the present licensee.

On the 1st of June, 1977, the Liquor Licence Board issued a proposal to SUSPEND the liquor licence for a period of ten (10) days as follows:

"2. Pursuant to Section 6(c)(ii) of the Liquor Licence Act the past conduct of J. Panagiotopoulos, an officer and employee of the licence holder, has afforded reasonable grounds for belief that business has not been carried on in accordance with law..

3. Particulars of the said past conduct are -

- a) On Sunday, May 22nd, 1977, at 4:45 p.m. the licence holder, by its employee, sold and served to an inspector of the Board, beer notwithstanding that he was not having a meal as required by Section 6 (2)(a) of the regulations.
- b) On Thursday, May 19th, and Friday, May 20th, 1977 at about 10:30 p.m. the licence holder by its employee sold and served liquor to a person in an apparently intoxicated condition. The name of the person so served is not known to the Board.
- c) On May 2nd, 1977, as a result of a fight outside the premises, police were called and observed several patrons in an intoxicated condition leaving the premises.
- d) On March 31st, 1977, an employee of the licence holder namely, Edward Walsh, was involved in a fight with two customers.
- e) The licensed premises is not being managed in an orderly and efficient manner as required by Section 5, subsection (11) of the regulations."

The Liquor Licence Board, after a hearing on Thursday, July 28th, 1977 issued a decision

"an employee of the Licensee, J & P Hotel Holdings (Toronto) Limited, did serve a patron an alcoholic beverage on Sunday, May 22nd, 1977, notwithstanding that he was not having a meal as required by Section 6 (2) (a) of Regulation 1008/75 under the aforesaid Act; moreover, the Board is also satisfied that on Thursday, May 19th, 1977, and Friday, May 20th, 1977, the licence holder by its employees, sold and served liquor to a person in an apparently intoxicated condition"

and ordered that the

"Lounge" Licence be "SUSPENDED" commencing at the opening hour on Monday, August 15th, 1977 to continue in effect until the opening hour on Monday, August 22nd, 1977.

At the beginning of the hearing before the Tribunal, Counsel for the Liquor Licence Board applied for leave to

introduce new evidence at the hearing concerning the following matter.

"On Friday, July 15th, 1977, between the hours of 9:30 p.m. and 1 a.m. the following day, the licence holder, by its officers and employees, did permit drunkenness and disorderly conduct to take place in the licensed premises, to wit, the lounge on the main floor, contrary to Section 5 subsection (4) of Regulation 1008/75 under the Liquor Licence Act 1975.

"Liquor was served to several intoxicated persons and on four separate occasions there were altercations between the waiters and certain patrons and it became necessary for the police to order the premises vacated prior to closing time.

"As a result of the incidents above described, four employees of the licence holder, namely, Vasilios Tsiodoras, George Anastopoulos, Theodore Vouyoukas, and Nikolaos Stafakas, were convicted of selling and supplying liquor to intoxicated patrons".

An inspector on behalf of the Board gave evidence that during his term of duty of the past 3 years in respect of the Stafford Tavern, there was a continuous history of behavior of patrons, described as rough and tough, on the main floor that was marked with rowdiness, fights, noise, and the like. He had discussed the situation with Mr. Panagiotopoulos on many occasions, stressing the need of more and better supervision. Though Mr. Panagiotopoulos was co-operative, especially in the early days of his operation, he preferred to be on the second floor where there were no difficult situations. He was rarely on the main floor in the evening. Mr. Panagiotopoulos readily removed a pool table which had been the focus of disturbance, upon the advice of the inspector. Though the situation quieted down for a short period, the rowdiness again got progressively worse. Mr. Panagiotopoulos did not come to grips with the situation until after the events of July 15th.

An 'incognito' inspector of the Board testified that on Thursday, May 19th, he was present at 10:15 p.m. in the main floor lounge where there were about 55 persons. He observed a patron who was obviously intoxicated in that he was staggering to the degree that he knocked down 3 chairs and overturned 2 glasses of beer, being thereafter served by a waiter.

On Friday, May 20th, he observed the same person in a condition of difficulty controlling his movements, served with beer. He described the atmosphere of the lounge as being loud and boisterous - not unusual for a lounge, but not with the good-time atmosphere of comaraderie generally associated with such premises.

Another 'incognito' inspector visited the second floor Sunday, May 22, 1977. There were no other patrons present. The room was set up for dining. He requested a beer from a waitress who served him with no questions asked. He was not offered a menu nor asked if he wished something to eat. The waitress was seated with Mr. Panagiotopoulos.

An officer with the Metropolitan Toronto Police Force testified as to a plain-clothes surveillance on the 15th of July, 1977 as a result of an accumulation of complaints. He recited a series of incidents from 9:25 p.m. until closing in which patrons who were obviously intoxicated and who acted most outlandishly, were served with beer. He described patrons who were standing, swearing, issuing challenges to fight, fighting, knocking over glasses of beer, unable to co-ordinate movements to light a cigarette. He described a patron, flushed and with bloodshot eyes who, unable to attract service, knocked over 2 chairs on the way to the bar and returned with a bottle of ale. The series of incidents continued. Two patrons prepared to fight, Mr. Panagiotopoulos intervened, and one was ejected. Not only was the latter not prevented from returning, he was served.

Two patrons entered intoxicated, fell down, and knocked over chairs, and were served. A patron started to dance with a chair and then was served 2 draft glasses. Another became involved in an argument, but was in such a condition as to have difficulty of expression. An older woman was intoxicated to the degree that she commenced a comic strip tease on the dance stage, was stopped by Mr. Panagiotopoulos, yet after sitting down was served. Another patron fell down, knocked over a table, was assisted to a table and served 2 draft beers.

And so, incident followed incident. People clearly intoxicated, behaving unusually, continued to be served without any concern for their condition and behaviour being further affected adversely.

Of the three hours, Mr. Panagiotopoulos was present for about 1½ hours. There was not adequate supervision of the 60 to 100 or more persons present, either as to entry or conduct thereafter. There was no specified doorman - the three waiters acting perfunctorily as doormen. The action taken, with one exception, was only to pacify persons and continue service.

The officer testified that of the 50 visits to over 20 licensed premises, this occasion was the most disorderly. The atmosphere was not that ordinarily described as of people having a good time. The conditions were such that ordinary police were called and charges laid. Thereupon the situation became such that it was necessary to clear the premises before closing time. Mr. Panagiotopoulos did assist in such clearance.

As a result of the raid following the surveillance, some 16 persons were charged. Of 10 charged by the testifying office, 9 were convicted - 4 ex parte and 5 after appearance in court. Of these 10, the officer testified in relation to his arrival, 4 had been on the premises and were already intoxicated, 4 were intoxicated when they entered, and 2 became intoxicated after entering. Four employees of the licensee were convicted of supplying liquor to intoxicated persons following charges laid as a result of this evening.

All of the above evidence and the validity of the allegations were admitted on behalf of the licensee. No counter evidence was presented except that the waitress who served the beer on Sunday was new and inexperienced, and that the waiters on the main floor refused to cooperate with management, refusing to act as instructed, and pushed beer to make tips. There was nothing put forth that would lead to believe that the evening of July 15th was an extraordinary one.

After July 15th, Mr. Panagiotopoulos began to deal with the problem more vigorously. He fired 3 of the waiters, hired a doorman and a manager. He spent more time on the main floor. It would appear that these actions have led to more orderly premises.

Counsel for the appellant made an eloquent plea for leniency with respect to the penalty to be imposed, suggesting that the suspension be reduced to 4 days and outside of Friday and Saturday. The basis of his plea was the difficult financial position of the licensee and the serious effect that a week's suspension would have.

The operation is a break-even business and no doubt the week's suspension would be a severe penalty in the light of heavy indebtedness of some \$250,000, and substantial monthly payments in respect thereof, with a significant overdraft at the bank.

However, the Tribunal finds that the management of the establishment fell far short of that which is to be expected. The grant of a licence carries with it the responsibility of ensuring that the requirements of the Liquor Licence Act and the regulations thereunder are carried out.

That the discharge of this responsibility is difficult is not an acceptable excuse. The Tribunal finds that though the management was sincere and hard-working and desirous of a good operation, it was either incapable or did not give sufficient attention or resources to what was required.

The above described conduct permitted on the premises over a considerable period of time, in contravention of

significant provisions of the Act and Regulations is not to be condoned.

The Act and Regulations clearly provide that management must ensure that certain specified acts do not occur. Not to take sufficient measures to in fact prevent drunkenness or disorderly conduct on the premises is to permit it. To allow the service of liquor to continue to the persons involved in the incidents of July 15th was to permit such behavior.

The Tribunal finds

- a) The licensee was in breach of Regulation 6 (2)(a) in that on Sunday, liquor was served to a person not having a meal while seated at a table, i.e. in breach of a term and condition of the licence.
- b) The licensee was in breach of Regulation 5 (4) in that the licensee permitted drunkenness and disorderly conduct to take place in the licensed premises - i.e. in breach of a term and condition of the licence.
- c) The licensee would have been disentitled to the issuance of a licence under Section 6 (1)(c)(ii) of the Act because of the conduct of one of its officers, directors, and shareholders in allowing the above and in allowing the employees of the licensee to supply liquor to intoxicated persons, as well as under Section 6 (1) (e) because of activities in contravention of the Act and Regulations.

THE TRIBUNAL THEREFORE ORDERS that the decision of the Liquor Licence Board on the 28th day of July, 1977, to suspend the lounge licence issued to J & P Hotel Holdings (Toronto) Limited in respect to the establishment known as Stafford Tavern, Toronto, be confirmed, and directs the Board to determine the commencement and termination of the suspension set out therein.

OASIS STEAK HOUSE TAVERN, Woodstock

Dining Lounge Licence
issued to
Hessien F. Zabian
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON and
BARBARA J. SHAND, MEMBERS

COUNSEL: B. J. SULLIVAN representing the Licensee
S. A. GRANNUM representing The Liquor Licence Board

DECISION: 28 December, 1977

Hessien F. Zabian is the licensee of the establishment known as Oasis Steak House Tavern located at 780 Dundas St. in Woodstock. Mr. Hessien F. Zabian is the Manager and is assisted by his brother in addition to hired staff.

The business was opened in July, 1974 and a dining lounge licence was issued in respect thereof in June, 1975. The establishment is a one-storey building with dining areas with a total capacity of 64 to each side of the main (front) entrance. There is also an exit for patrons to the parking lot. Full visibility is obtained only from within each of the two areas. The licensed hours are from 12 noon to 1 a.m. The main service is during the hours 12 noon to 2 p.m. and 5 p.m. to 9 p.m. for luncheon and dinner. Though the emphasis is on that of a steak house, the menu is a complete one with steaks, seafood, roasts, and sandwiches. There is table service and the kitchen is well equipped.

Except for the suspension by the Liquor Licence Board of May 5th, 1977 which is the subject of this appeal, the Board has not suspended the licence of this establishment during the time of ownership thereof by the present licensee.

On the 31st of March, 1977, the Liquor Licence Board issued a proposal to suspend the liquor licence for a period of 7 days as follows:

- "2. The licensee was convicted on March 24th in Provincial Court at Woodstock of knowingly selling or supplying liquor to a person under the age of eighteen years contrary to Section 45 (1) of the said Act.
3. Pursuant to Section 6 (d) of the said Act, the past conduct of the licensee affords reasonable grounds for belief that he has not carried on business in accordance with law".

The Liquor Licence Board after a hearing on 5th of May, 1977 issued a decision:

"The Liquor Licence Board finds that the past conduct of the licensee has been in contravention of the Act and Regulations appurtenant thereto in that the Board is satisfied he did, in fact, serve alcoholic beverages to minors in the licensed premises"

and ordered that

"The 'Dining Lounge' Licence be 'SUSPENDED' for the period commencing at the opening hour on Monday, May 23rd, 1977 and to continue in effect until the closing hour on Saturday, May 28th, 1977".

At the beginning of the hearing before the Tribunal Counsel for the Appellant Licensee requested that the hearing be in camera. The Tribunal considered the request in the context of Section 9 (1) of the Statutory Powers Procedure Act 1971 and ruled that the adverse effect upon the party was not considered to be so serious as to outweigh the public interest that the hearing be open. The Tribunal did permit the deletion from the appeal book in the Record of Proceedings before it of the financial statement of the monthly report of food and liquor sales, as not being directly relevant to the proceedings.

An officer with the Woodstock Police Force testified that on the 9th of October, 1976 at about 9:25 p.m. he noted a motor vehicle jerking, weaving back and forth. Upon stopping the vehicle he interviewed 2 minors, Jeffrey Scott Grant, born 28 February, 1959, and Mark Scriver, born 15 July, 1960. There was a strong odour of alcohol on their breath. Jeffrey Grant is about 5'5" tall, thin, with long hair and did not, in the opinion of the constable, appear to be 18. Mark Scriver was about 5'7" tall with curly hair and appeared well under 18, having a 'baby face'.

The minors admitted to having consumed 1 bottle of beer each at the Oasis Steak House Tavern. They said they had not been asked to produce age of majority cards. The constable went to the Oasis Steak House with the 2 young men and upon speaking with Mr. Hessien F. Zabian it was admitted that the two had been supplied with beer on the premises. The young men were not impaired; the actions of the car were due to their "fooling around". They were permitted to drive the car to the Oasis Tavern and later home. The two minors were charged and subsequently convicted under the Act.

A sergeant with the Woodstock Police for 18 years confirmed that the minors both did appear to be under the age of 18, smelled of alcohol, and made the admission as to the drinking of beer. He acknowledged that he had attended the Oasis Steak House in a private capacity with his family, and that he considered it was a very good family restaurant with excellent meals. He agreed that if there had been any complaints about the Oasis he would have heard of them; that in fact, though there had been complaints about other establishments there had been none about the Oasis except the current incident.

An inspector with the Liquor Licence Board for some 10 years and responsible for some 62 establishments testified that he had inspected the premises about once every three weeks since the 6 May, 1976 and that the operation of the Oasis Steak House had been good up to the incident and very good since.

The incident came as a surprise to him. When asked his opinion as to the licensee carrying on business with integrity and honesty, he replied that he had 'nothing against him'. The licensee had always been cooperative with him. The control of minors was even better after the incident and only age of majority cards were accepted.

As convictions had been registered against the licensee no evidence counter to that of minors having been supplied was presented; the defence to the charges had related to who supplied the beer. Mr. Zabian testified that after the original conviction the inspector had spoken to him about the age of majority cards; that he relied only on them and that he had inserted a notice to this effect in the advertisement of his establishment.

He testified that he had been fined \$153.00. He evidenced some concern of the net loss of \$200 to \$250 from sales of liquor upon a suspension of 6 days, but his chief concern was regarding his reputation with his 'high class' customers who patronized him regularly and who would wonder as to the suspension.

Mr. Zabian also testified that after the charge had been laid regarding the incident of October 6, he made an application in respect of restaurant premises in Dorchester which he had leased and was equipping as such. He had advised the Board of the charge in his original step toward the licensing and again in a formal application in November, 1976. He had been advised that the preliminary application was approved and had as requested, sent in \$52.50 to defer the costs of the necessary advertisement. The hearing took place on the 18th of February, 1977 and thereafter the licence was refused because of the supplying of liquor to minors. He thereupon gave up the lease and sold the equipment, suffering thereby a financial loss.

The Tribunal finds that the licensee did supply liquor to minors and accordingly the Board did have the power to suspend the licence by virtue of Sec. 11 (3) and Sec. 6 (1) (e).

The issue before the Tribunal is whether the penalty of a suspension should in fact be imposed. Counsel for the Board pointed out that under the Act, 2 forms of penalty were set out by the legislators - that following a conviction under the Act, and that which the Board is enabled to impose; and that the 2 actions are unrelated and can be applied independently. The Tribunal agrees.

Counsel for the Board made reference to the necessity for the imposition of the penalty of suspension as a deterrent both to the licensee and to others. The supplying of liquor to minors is a very serious matter; in the ordinary course a penalty should follow the breach of that section of the Act. However, the Tribunal is of the opinion that the occasion of a single incident, indeed an incident that appears to be an aberration, is not one appropriate for utilization for deterrent effects.

The Liquor Licence Board based its refusal to issue a further liquor licence to the licensee by reason of the supplying of liquor to minors. The entitlement of the licensee came within an exception by virtue of the conviction and the Board exercised its discretion of refusal. Such action is tantamount to imposing a penalty, with serious financial implications both short and long term.

The imposition of a second or further penalty by way of suspension of the licence for any period of time, for the same reason and under the particular circumstances is, in the opinion of the Tribunal, unwarranted and would serve no purpose.

THE TRIBUNAL HEREBY ORDERS that the decision of the Board on the 5th day of May, 1977 suspending the Liquor licence issued to Hessien F. Zabian in respect of Oasis Steak House Tavern be and is hereby revoked.

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Summaries
of Decisions
Volume 2

Liquor Licence Appeal Tribunal



Ontario

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Ontario

LIQUOR LICENCE APPEAL TRIBUNAL

SUMMARIES OF DECISIONS* - VOLUME 2

Cited 2 L.L.A.T.

*This volume contains summaries of, and in some instances full decisions and reasons given. If reference to the exact decision or a copy of this volume is desired application should be made to the Registrar.

LIQUOR LICENCE APPEAL TRIBUNAL

INDEX SUMMARIES OF DECISIONS

VOLUME 2

<u>Name of Establishment</u>	<u>Appeal From</u>	<u>Page</u>
Barn Steak House Tavern	Terms and Conditions	52
Brockdan Motor Hotel	Suspension	1
Crest Hotel	Suspension	117
Cromwell's Tavern	Terms and Conditions	133
Dinkel's Tavern	Terms and Conditions	60
Diplomat Tavern #2	Terms and Conditions	69
Fitz's Restaurant and Tavern	Refusal to Issue Licence	125
Kirkland Lake Hotel	Suspension	77
Lakeside Hotel	Suspension	13
Le Dome Restaurant	Terms and Conditions	38
Mariner's & Sailor's Pub Tavern	Suspension	26
Northbury Hotel	Suspension	102
Peter Piper Hotel	Suspension	109
President Motor Hotel	Suspension	88
Pros Restaurant	Refusal to Issue Licence	148
Shalamar Restaurant	Terms and Conditions	142
Shortt's Restaurant	Issuance of Licence	130
Toronto Fire Fighters' Recreation Club	Suspension	46
Wheat Sheaves Tavern	Suspension	20
William J's Tavern	Terms and Conditions	136

LIQUOR LICENCE APPEAL TRIBUNAL
CROSS INDEX TO VOLUME 2

<u>Licensee or applicant</u>	<u>Page</u>
Batcules, William J. & Sons Limited (William J's Tavern)	136
Bidwell Investments Limited (President Motor Hotel)	88
Blue Fox Tavern Limited (Shortt's Restaurant)	130
Conjo Limited (Cromwell's Tavern)	133
Cowderoy, Mrs. Victoria (Barn Steak House Tavern)	52
Dinkel, Paul (Dinkel's Tavern)	60
Foster, Dr. Dwight (Fitz's Restaurant and Tavern)	125
G. A. Bacon Hotels Limited (Kirkland Lake Hotel)	77
Galera, Salvatore Giuseppe (Shalamar Restaurant)	142
James Booth Enterprises Limited (Peter Piper Hotel)	109
Le Dome Holdings Limited (Le Dome Restaurant)	38
Mantinia Holdings Limited (Diplomat Tavern #2)	69
Northbury Hotels Limited (Northbury Hotel)	102
Ouzounis, Vasilios (William) (Pros Restaurant)	148
P. & S. Hotels Limited (Brockdan Motor Hotel)	1
Petrick-Wiejak Crest Hotel Limited (Crest Hotel)	117
Riley, Fitzgerald (Fitz's Restaurant and Tavern)	125
Smith, Arthur James (Lakeside Hotel)	13
Sorkos, Kostos (Gus) (Barn Steak House Tavern)	52
Stoodleigh Mariner Limited (Mariner's & Sailor's Pub Tavern)	26
Toronto Fire Fighters' Recreation Club (Toronto Fire Fighters' Recreation Club)	46
331774 Ontario Limited (Wheat Sheaves Tavern)	20

NOTES ON APPEALS FROM TRIBUNAL DECISIONS
TO SUPREME COURT OF ONTARIO
DIVISIONAL COURT

Barn Steak House Tavern Appeal proceeding	2 L.L.A.T. 52
Cecil Tavern Appeal dismissed	1 L.L.A.T. 39
Diplomat Tavern Appeal withdrawn	1 L.L.A.T. 31
Wheat Sheaves Tavern Appeal dismissed	2 L.L.A.T. 20

THE BROCKDAN MOTOR HOTEL, Sudbury

Lounge Licence
issued to
P. & S. Hotels Limited
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON and
BARBARA J. SHAND, MEMBERS

COUNSEL: ELMER W. SOPHA, Q.C. representing the Licensee
S. A. GRANNUM representing The Liquor Licence Board

DECISION: 20 February, 1978

P. & S. Hotels Limited, Licensee (#010962) and appellant herein carries on business under the name and style of Brockdan Motor Hotel, and operates under that name premises classed as a hotel located at Pioneer Road, R. R. #3, (Highway #69) Sudbury.

The hotel is a 2-storey building offering 24 rooms, 12 on the main (ground) floor and 12 on the 2nd floor.

There is issued since 1968 to P. & S. Hotels Limited, a dining lounge licence (Serial #0506) in respect of 2 dining areas, one on the second floor and one on the main floor with a capacity of 80 persons, and a lounge licence (Serial #6241) in respect of 3 rooms located on the main floor with a capacity of 92, 97, and 86 respectively. The 3 rooms are designated on the licence as:

1. east centre section (referred to herein as Lounge 1)
2. north-east section (referred to herein as Lounge 2)
3. north-west section (referred to herein as Lounge 3).

All 3 sections are adjacent to each other, Lounges 1 and 2 being open to each other along their common boundary, Lounge 3 being separated from Lounges 1 and 2 along their common boundaries by a solid (floor to ceiling) wall except as to entrances and passageways. A bar serves Lounges 1 and 2, and a bar serves Lounge 3. The latter (north) bar makes available chips, and a cigarette machine is located here.

Entrance to all three is common from a corridor from the lobby. There are exits from all three. From Lounges 1 and 2 the exit is to a street; from Lounge 3 the exit is to a parking lot. These exits, as fire doors, are equipped with equipment so as to enable exit but restrict entrance. Women's and men's washrooms for all three are situate at the ends of Lounges 2 and 3, adjacent to the exits furthestmost from Lounge 1. The layout of the various facilities generates a good deal of traffic.

There is a dance floor at one corner of Lounge 1 on the side away from Lounge 2 for the use of patrons of both these lounges. Entertainment for these 2 lounges for listening and dancing is provided. At the time being considered, music of the rock style was provided here by a popular band using sound amplification, known as the Hott Roxx. Because of the entertainment a cover charge of \$1.00 was made in respect of Lounges 1 and 2. Control in this regard was exercised at the common entrance immediate from the lobby and further along at the door giving direct entrance to the lounges.

At the lobby entrance there was a sign about 2' square as follows:

"WARNING TO MINORS
The law forbids persons
under the full age of 18
years to enter a lounge
or public house.

No admittance Lounge without Proof of Age".
The sign also read "\$1.00 per person Cover Charge".

The beer in Lounges 1 and 2 was sold for \$1.25, in Lounge 3 for 80¢, i.e. 45¢ less. Generally Lounges 1 and 2 are patronized chiefly by young, active persons including university students, and had a strong convivial atmosphere. Lounge 3 is patronized by persons wishing to sit and talk, or play pool.

The staff at the relevant times consisted of 2 bartenders, 3 security staff, and 6 waitresses, with Rudy Podrebarac on the premises almost all the time.

Rudy Podrebarac and Mildred Podrebarac are the sole officers, directors, and shareholders of the licensee corporation and both are active in the management and daily operations of the hotel - the latter (Secretary-Treasurer) in respect of office and other matters outside the lounges - the former (president) in respect of matters related to the lounges and in that regard, on duty six nights a week.

Both have had a long and varied connection with licensed premises. Mildred Podrebarac's father and brother had operated the Belvedere Hotel from 1956 and she had worked in all aspects there and learned the 'ropes'. Rudy Podrebarac had worked as a waiter from 1959, as a bartender and night manager at the Belvedere Hotel from 1961. As P. & S. Holdings Limited, they had acquired Brockdan Hotel in December, 1968. At that time the physical aspect of the establishment was improved.

Except for the suspension of the licence by the Liquor Licence Board in October, 1977 which is the subject

matter of this appeal, the Board had never suspended or revoked licences issued to the licensee, nor has the Board at any time disciplined the licensee or the management thereof.

With one exception (to be referred to) there had been no complaint of the operation by the local inspector of the Liquor Licence Board or the police. Rudy Podrebarac had had "no trouble" with the police, to whom he had turned when necessary - about twice yearly in regard to patrons who refused to accede to endeavours that they leave and stay out of the premises. The police had made the comment to him, "keep up the good work".

On the 15th day of September, 1977, the Liquor Licence Board issued a Notice of Proposal to suspend the liquor licence issued to the licensee for a period of ten days for the following reasons:

(3) On or about Friday, the 15th of July, 1977, at approximately 10:35 p.m. an employee of the licence holder served liquor in the lounge to persons in an apparently intoxicated condition.

(4) On or about Saturday, the 16th day of July, 1977 at approximately 12:15 a.m. an employee of the licence holder served liquor in the lounge to persons in an apparently intoxicated condition.

(5) On the said dates, patrons were observed leaving the licensed premises carrying partly-consumed bottles of beer contrary to Section 6, subsection (11) of the Regulations under the Act.

(6) On Friday, July 29th, 1977, patrons were allowed to wander from one licensed area to another and many of the said patrons were in an apparently intoxicated condition.

(7) The licence holder is in breach of a term and condition of his licence in that, by its officers and employees, it has permitted drunkenness in the licensed premises, contrary to Section 5, subsection (4) of the Regulations, and the licensed premises have not been operated in an orderly and efficient manner as required by Section 5, subsection (11) of Regulation 1008/75.

After a hearing requested on behalf of the licensee the Board on the 25th day of October, 1977 found the licensee

"to be in contravention of the said Act and Regulations appurtenant thereto, in particular, Section 5 subsection (11) of Regulation 1008/75 under the Liquor Licence Act."

and by virtue of the authority vested in it under Section 11 subsection (3) of the Liquor Licence Act, 1975 suspended the Lounge Licence for the period commencing at the opening hour on Monday, November 14th, 1977 and to continue in effect until the opening hour on Monday, November 21st.

At the hearing before the Tribunal, Counsel for the Board stated that he would not be pursuing the issue set out in Item 6 of the Proposal.

The action of the Liquor Licence Board followed on a report made by Mr. Roy Henderson, supervisor of investigations for the Board and special investigator making random spot calls throughout the Province, who had visited the licensed premises in July, 1977 as a result of communications to the Board from the Ontario Provincial Police and from a solicitor in Sudbury.

Mr. Henderson testified at the hearing of the Tribunal:

On Thursday, July 14th, he visited the premises, gaining entrance through an exit door, and found the operation in Lounge 2 where he stayed, to be in order.

On Friday, July 15th, he visited the premises in the evening about 10:35 p.m. and through the main door through the lobby went to Lounge 3 where there were 32 patrons of whom he concluded 2 were drunk. One was staggering, carrying a bottle of beer, yelling and swearing at friends at another table (but not in a belligerent fashion). He left the premises through an exit door and returned shortly still carrying the bottle, to sit at a table. There was no recollection of service of beer to him after that. The other was sitting at a table with beer in front of him in a semi-state of consciousness, i.e. half asleep, and then fell asleep.

Mr. Henderson was of the opinion that this condition was brought about by the influence of alcohol. He estimated the length of time of the sleeping from 10 to 15 minutes. Upon waking, the patron drank up what was on the table and left. There has been no service to him after he had fallen asleep.

Mr. Henderson also testified that the same night he saw a waitress at the bar sipping a pint of beer. There was no indication that she was affected thereby, for she continued to be ably and industriously engaged in her duties.

Mr. Henderson went from Lounge 3 to Lounge 2 which was filled to capacity and where the Hott Rxxx were entertaining. There was no evidence of intoxication, but he was of the opinion that there were several persons whom he thought under

age, noticing that no checks as to age were made at that point but he did not pursue the matter. He also stated that patrons were wandering about. He did not go to Lounge 1 as he thought it all one lounge; he could have observed anything untoward from Lounge 2. He left at about 11:30 p.m.

On Saturday, July 16th, he visited Lounge 3 in the afternoon and found the operation in order. That evening he returned and made a surveillance only, in Lounge 3. At 12:15 a.m. (i.e. after midnight) there were 60 patrons in the lounge. He concluded at least six males were drunk, in that they had the attitude and appearance which he associated with drunkenness. They were carrying their drinks, were boisterous, unkempt, staggering, stopping at tables, talking loudly, pounding each other. However, no one fell or knocked anything over. One patron in particular was staggering from table to table and then sat down and fell asleep.

He did not observe anything that he considered an infraction in Lounge 2 which again was filled to capacity. Mr. Henderson was on the premises for an hour or so. He noticed an employee, Arthur Filon, standing at the bar between Lounges 3 and 2 - evidently making sure no one entered through the exit doors - and circulating about. He acknowledged that he was "doing his job" in general supervision.

Mr. Henderson took no action with respect to any of the matters he related, did not seek out, nor speak to the management or employees.

No action by way of charges by anyone followed.

This procedure followed by special investigator Henderson including not revealing oneself, was in accordance with the policy of the Liquor Licence Board. The duty was to observe and report. His investigation formed the basis of the Notice of Proposal by the Board. Mr. Henderson was not in a position to pass judgment on the capabilities of the management, that not being part of his duties.

On behalf of the licensee a number of employees of varying periods of employment and the officers testified. Since the investigator contacted no one involved in the operations during his visits no one was able to give direct testimony as to the occurrences on the nights in question. No specific incidents were recalled by anyone and no one was in a position to comment directly on the evidence of Mr. Henderson. All testified as to the policies and procedures of the licensee.

Mr. Arthur Filon who, having worked elsewhere for two years as a waiter, had now been employed by the licensee as a 'doorman' (described as a position of management because of supervisory duties) for two years. He testified that patrons

were screened at the lobby entrance door where the cover charge was requested - both as to age and condition and were re-checked at the entrance to the lounges "in case someone had slipped through". Patrons could be checked again inside for age. Anyone under the influence, staggering, or falling asleep would be asked to leave. With respect to the latter he thought it unlikely to occur because of the extremely loud music and did accede that sometimes such an occurrence could go unnoticed in a crowd, (which was the case at the times considered). An attempt was made to keep movement to a minimum. The policy was not to permit persons to leave the premises with bottles, and "no drinking on the job". He stated that there had been no problems with employees drinking. There would be 5 persons engaged in supervision, the adequacy of which he described as quite good. All patrons would have to leave by 1:30 a.m. His recollection of the patrons on the evening dealt with (related to the presence of the Hott Rxxx) was that they were "real happy".

Another doorman testified that the double check regarding age was followed "to be sure" as some minors would appear to be over eighteen but not be so in fact.

The rear bartender who supervises the waitresses said that instructions were not to serve anyone appearing under age without a further check, not to serve anyone appearing to be intoxicated, and to stop serving anyone appearing to be getting intoxicated.

The other bartender testified that intoxicated persons were barred, that employees were not allowed to drink, and as to rowdiness, the activities of patrons were not to get out of hand. His assessment of the operations was that there was "very adequate supervision". With respect to the six persons referred to by the inspector, he offered the opinion that likely they were six young people having a good time. He had no view of Lounge 3, did have a view of Lounge 1, and a partial view of 2.

A waitress who served in Lounges 1 and 2 reiterate the policies and supervisory resources. When queried as to intoxication she alluded to actions of some misbehavior being of the opinion that a patron would be considered as having had "enough" if "obnoxious", "stumbling", "disturbing people", "being a nuisance".

All employees testifying reiterated that after the Board hearing management had returned and laid down on an individual basis, the admonition that they were to check more carefully, and that rules and policies were to be followed strictly or else "they would be fired".

Mildred Podrebarac testified that management expected the most of their employees, that they would have to abide by the rules of the Liquor Licence Board or be let go. Since they had never had any complaint from the Board, they came away from the Board's hearing surprised, and thereupon took an ultra-strict position with their employees.

Rudy Podrebarac testified that the only complaint he had had from the local Board Inspector was one night in February, 1977, that patrons from Lounge 3 were towards the close of an evening, crowding into one end of Lounge 2 at the bar. Whereupon he called upon the supervisor to clear up the situation and the matter was settled. His recollection of the patrons was that they were "happy". In his opinion a person was not intoxicated unless there was something rowdy in his actions, e.g. "banging a glass on the table". He reiterated that after the Board hearing he tightened up on the necessity for adherence to rules, and threatened dismissal without warning for a breach thereof. Mr. Podrebarac was of the opinion that the level of supervision was excellent.

Management and employees clearly were under the impression that the operations had been carried on satisfactorily and that an orderly operation had been carried out.

The relevant provisions of the Liquor Licence Act, 1975 and Regulations passed pursuant thereto are as follows:

The Liquor Licence Act

Sec. 44. No person shall sell or supply liquor or permit liquor to be sold or supplied to any person in or apparently in an intoxicated condition

and Ontario Regulation 1008/75

Sec. 5(4) No holder of a licence shall permit any...drunkenness, or any riotous, quarrelsome, violent, or disorderly conduct to take place in the licensed premises.

(5)....no holder of a licence shall permit any person under or apparently under, the age of eighteen to enter or be upon the licensed premises.

(11) Every licensed premises shall be under the management and supervision of a person who has experience in the food and beverage industry such that he is capable of managing an orderly and efficient operation.

Sec. 6(11)....all liquor sold in a licensed premises shall be consumed on the licensed premises, and the licence holder shall not permit any liquor so sold to be taken from the licensed premises.

No breach per se of the Statute or Regulations thereunder is committed by the consumption of liquor by an employee while on duty or by the 'wandering' of a patron or patrons within licensed premises. That a breach be committed required something further in relation to either of the foregoing acts so that they come under some specific prohibition. Any prudent licence holder ought to be mindful that such activities uncontrolled could lead to a breach of such specific prohibition.

The Tribunal finds that with reference to Regulation Section 5(4) the testimony of the inspector fell short of providing details necessary to find that the licensee permitted any persons apparently under the age of 18 years to enter or be upon the licensed premises.

With reference to Regulation 6(11) the Tribunal finds that the single exit during 4 periods of operations by a patron with a bottle of beer through a fire door exit, with almost an immediate re-entry by that person with the bottle does not constitute a breach by the licence holder of the said Section; the licensee did not so commit the act of permitting any liquor sold in the licensed premises to be taken from the licensed premises. The Tribunal has heretofore held that the term "no licence holder shall permit" can be construed to mean "no licence holder shall not prevent", accepting the meaning of the Ontario Court of Appeal in R.v. Royal Canadian Legion 1971 3 OR. 552. In R.v. Action Tavern Limited, 26 C.C.C. (2nd) 127 Greco Prov. Ct. J. interpreted (Page 133), the learned judges construing the term as saying, "that the licensee was bound by statute to make certain that the prohibited acts did not occur" Judge Greco went on to say,

"How can the licensee accomplish this: In my opinion the dilemma with which he is so frequently confronted is not lacking of solution. Really, common sense itself dictates the answer. It can be said that the licensee would permit or suffer the prohibited conduct if he abstained from taking reasonable steps to make certain that it did not happen. Speaking positively, the licensee should at all times do all that which an ordinary prudent man would do in exercising reasonable diligence in the carrying out of his particular type of business venture. Of course what is reasonable in one type of business or case may fall short of or exceed that which may be reasonable in another.

It has long been recognized in our law that reasonableness is relative and must be proportioned to the circumstances of the case considered as an entirety".

The Tribunal is of the opinion that the single incident of the kind related by the investigator cannot be the basis for a finding that the licensee had not exercised reasonable diligence in compliance with the said Regulation. That the investigator gained entry by way of an exit door on an occasion does not reflect on that diligence. The supervision of the operations on the 15th and 16th of July so far as the exits were concerned, were reasonably adequate. Indeed, because of the cover charge, it was in the interest of the licensee to control exits. The incident was so quick to occur and so fleeting that only a guard at each door at all times would have prevented such an occurrence. There is nothing in the history of the operations of the establishment that would demand or warrant such an arduous requirement.

Consideration of Section 44 of the Act and of Regulation Section 5(4) must start from a consideration of the meaning of the words "intoxicated condition" and "drunkenness". The Tribunal has heretofore discussed these terms, equating one to the other. A dictionary definition of the word "intoxicated" is, "affected temporarily with diminished control over the physical and mental powers".

It is common knowledge that there are stages of intoxication; for example, the first stage

"the drinker becomes excited, talkative, perhaps giddy and unsteady on his legs, although not incapacitated from performing all his duties" Reg. v. McLean (1899)
3 C.C.C. 323

It has also been said:

"In ordinary parlance, there are degrees of intoxication - dead drunk, staggering drunk, slightly drunk, etc."
American Automobile Ins. Co. v. Dickson (1942)
4 D.L.R. 220 9 I.L.R. 178 (C.A.) affirmed (1943)
S.C.R. 143; [1943] 2 D.L.R. 15: 10 I.L.R. 38

It has also been held

"Whenever a man is under the influence of liquor so as not be entirely himself, he is "intoxicated"; although he can walk straight, attend to his business and not give any outward and visible signs to the casual observer that he is drunk, yet, if

he is under the influence of liquor so as not to be himself, so as to be excited from it and not to possess that clearness of intellect and that control of himself that he otherwise would have, he is intoxicated." General Casualty Insurance Co. v. Lambert Insurance Co. of Paris [1930] 3 D.L.R. 1007 [1930] 2 W.W.R. 548, 43 B.C.R. 133

There is no fixed line before which one is sober and after which one is intoxicated. The extremes of course present no difficulty.

"Intoxication is the stupefied condition of a person who has imbibed alcoholic liquor in sufficient quantity to make him lose totally or partially the use of his mental or nervous faculties. To be intoxicated in the legal sense, it is not necessary to be dead drunk any more than to be ill it is necessary to be dying. It is sufficient that an individual be affected by alcohol to the point of no longer having his normal control, his judgment, or in a word, that he no longer has the use of all his intellectual or physical faculties." Desbiens v. R. (1951) 103 Can. C.C. 36 per Bienvenue, J., at p. 41.

This Tribunal has held that a person is intoxicated:

"....when as a result of his consumption of intoxicating liquor, his physical or mental faculties, or his judgment, are appreciably and materially impaired in the conduct of the ordinary affairs or acts of daily life."

R.v. Ormsby [1945] N.Z. L.R. 109 per Fair, J. at p. 109;

The testimony of employees of the licensee engaged in direct service and supervision of patrons, and of the management gives the impression that all associate the condition of intoxication and drunkenness as requiring some negative characteristics in the behavior of the person being assessed. Their yardstick requires some aspect of improper behavior, for example: making a nuisance, an attitude of or actual fighting, rowdiness, extreme boisterousness, and the like - all related by and large to interference with others or property.

The Tribunal is of the opinion that a finding of intoxication or drunkenness is not restricted or dependent upon a finding that such or similar aspects existed.

Those behavioral acts could be aspects of drunkenness, and indeed, would likely be aspects of riotous, quarrelsome, violent, or disorderly conduct. There can be drunkenness without them.

However, where it is a question of one person assessing another's state, we are of the opinion that the state must be manifested in some way, for

"it may be prudent to confine the application of the word 'intoxicated' to cases where recognizable symptoms of it are observable."
 Earnshaw v. Dominion of Canada General Insurance Co. [1943] O.R. 385 (C.A.) per Robertson, C.J.O. at p. 398

The Tribunal finds that the description in total by Investigator Henderson of 2 patrons on the night of July 15 and of 6 patrons on the night of July 16th was of persons exhibiting drunkenness.

The Tribunal has based the findings of the supplying of liquor to intoxicated persons on inferential and circumstantial evidence. A lounge is a facility for the purpose of supplying liquor. Persons generally resort to a lounge to be supplied with liquor. Where there is an appearance of the supplying of liquor having taken place or a consequence of liquor having been supplied is evident, it can reasonably be inferred that this was in fact done.

However, the Tribunal will give the holder of the licence the benefit of doubt since there is no indication of the state of any of the persons prior to or at the time of being supplied with the liquor in their possession when observed.

It is difficult to account for the incidents in Lounge 3 having taken place. Perhaps it was because the supervision was concentrated in Lounges 1 and 2 where the entertainment and a lot of activity was taking place, e.g. there were 5 waitresses in Lounges 1 and 2, and only one in Lounge 3. The doorman 'supervisor' appeared to give it less attention.

Mr. Grannum on behalf of the Board argued that a breach of Regulation Section 5(11) should follow from a finding of other breaches, for example, bolstered by some other aspects of the operation which, though not in themselves contraventions, indicated incapability of management, i.e. that there was a cumulative effect.

The Tribunal holds that such argument is not applicable in this case.

Mr. Sopha's position on behalf of the licensee in this regard was that it had been demonstrated that the operations were in fact in the hands of persons having the characteristics set out in Section 5(11). It is noteworthy that apart from evidence related to the incidents described, there had not been a specific assessment of the operations of the licensee in the light of the requirements of the section. That is not to say that such assessment is a prerequisite to a finding under Section 5(11).

However, the evidence of the local inspector of the Board having made inspections for a number of years may have been helpful in his advancing an opinion based on his surveillance over a period of time. That opinion was not made available to the Board or Tribunal. As stated earlier, the sole witness testifying in support of the allegations was not in a position to offer an assessment.

The Tribunal is impressed by the experience and attitude of the management and staff of the licensee. The Tribunal finds that there was no contravention of Regulations Section 5(11) namely, that the premises "be under the management and supervision of a person who has experience in the food and beverage industry such that he is capable of managing an orderly and efficient operation."

The Tribunal finds that P. & S. Hotels Limited permitted drunkenness to take place in licensed premises, and accordingly is in breach of the condition of the licence as set out in Ontario Regulation 1008/75 Section 5(4).

The prohibitions under the Liquor Licence Act relate to serious matters. Those who are licensed to sell liquor have a heavy responsibility with respect thereto.

Mr. Sopha stressed the fact that the operations of the licence holder had not been subject to discipline theretofore. This is so. However, the standard set by the Legislature and Lieutenant Governor in Council requires nothing less than what had been the history of the operation. The Tribunal has given consideration to the record of the licensee as presented to it.

The Liquor Licence Appeal Tribunal hereby alters the decision of the Liquor Licence Board by changing the Order dated 25 October, 1977 of Suspension of the Lounge Licence herein to an attachment of a term and condition to the said licence that Room 3 northwest section herein referred to as Lounge 3 be closed for the sale, service, and consumption of liquor for a period of six consecutive business days, to be set by the Liquor Licence Board, and the Tribunal hereby so orders.

LAKESIDE HOTEL, St. Catharines

Lounge Licence
issued to
Arthur James Smith
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON and
BARBARA J. SHAND, MEMBERS

COUNSEL: K. G. PEDWELL representing the Licensee
S. A. GRANNUM representing the Liquor Licence Board

DECISION: 20 February, 1978

Steve Werchohlad and Arthur James Smith became licensees (#011076) of the premises classified as a hotel, in partnership, under the name and style of Lakeside Hotel, 16 Lock Street, St. Catharines, on or about the 29th day of July, 1976.

There is issued in respect of the hotel - a dining lounge licence, a lounge licence, and a Public House licence

The facilities were refurbished at a cost of \$100,000 to include a modern kitchen, formal dining room, new lounge and bar with entertainment and dance facilities, as well as new washrooms located on the same floor as the dining and lounge area. The premises appear to be adequately equipped to serve a broad range of food.

Under the partnership agreement as explained by Arthur Smith, Steve Werchohlad was to be active manager full time, and Arthur Smith would assist him.

On the 14th of September, 1977, the Liquor Licence Board issued a proposal to attach to the liquor licences (dining lounge and lounge) of the Lakeside Hotel a term and condition that no spirits, beer and wine be sold or served in the licensed premises on Sunday for the following reasons:

"7. The licence holders have carried on activities that are contrary to the regulations and in particular, Section 6 subsection (2) of the regulations under the Liquor Licence Act, 1975".

Following the hearing requested by Arthur Smith on the 18th of October, 1977 (the partnership being in the process of being dissolved) the Board found that

"the licence holder has carried on activities that are contrary to Section 6(2)"

and the Board ordered that

"the 'lounge' licence granted to Arthur James Smith (Sic) in respect of the Lakeside Hotel, be SUSPENDED for four Sundays, more particularly, Sunday, November 6th, 13th, 20th, and 27th, 1977".

Section 6(2) of the said Regulation states as follows:....

- (a) liquor shall only be served to a person having a meal while seated at a table

Mr. Roy Henderson, a supervisor of investigations, testified that on the 5th day of June, 1977 he entered the lounge at about 1:30 p.m. and sat at the bar. At that time there were eight patrons sitting at the bar drinking and eating chips and hamburger sandwiches. Mr. Henderson asked for a beer and was served with no mention of food. There were no menus at the bar. After fifteen minutes Mr. Henderson left.

When asked to define a meal, Mr. Henderson was of the opinion that it had to be "something hot - a full course meal".

Arthur Smith was on the premises but no communication was had with him at this time.

A letter dated 15th of June addressed to Messrs Werchohlad and Smith, Lakeside Hotel, was sent by R. W. Cooper, Executive Director of the Liquor Licence Board. The letter stated in part as follows:

"a recent inspection of your establishment has disclosed that liquor is being sold on Sundays to persons not having a meal while seated at a table.

This practice must cease immediately, since it is in contravention of the Regulations".

Section 6(2) of the Regulations was recited in full, and the letter continued:

"It should be noted that this communication should be regarded as an official "warning" and any further contravention of this section of the Regulations will result in a hearing before the Board and penalties which could include a suspension and/or terms and conditions being applied to your licence.

We ask for your co-operation in this most serious matter".

Walter J. Malkiewicz, an inspector of the Liquor Licence Board for 5 years, the last 3 in St. Catharines, testified that he attended the premises on the 16th of June, 1977 to discuss Mr. Henderson's inspection of June 5th with Steve Werchohlad. Mr. Werchohlad was informed to conform with the Sunday regulation requirements.

Mr. Malkiewicz who had visited the premises from May, 1976 to June, 1977, testified also as follows:

On Sunday, April 24th, he had visited the lounge and there was no evidence of food. There was no one in the dining lounge. On the 25th of April he spoke to Steve Werchohlad about the matter as a first warning.

He had discussed the Sunday regulation with Mr. Werchohlad. Mr. Malkiewicz stated that at that time a lot of people had different interpretations of the new regulations with reference to Sunday sales. His understanding at that time was that a meal was anything consumable on a menu and that basically food sales had to exceed liquor sales. He stated there was some question whether each person had to eat or whether the important thing was that in the total for the day, the dollar sales of food and liquor should balance.

He then had inquired of the Chairman and understood from him that "meal" meant "a full course meal". In the latter part of May he so advised Mr. Werchohlad, and that everybody had to eat.

On June 26th about 4:15 p.m. Mr. Malkiewicz visited the premises. In the lounge there were about 45 customers. There was no evidence of anybody eating at that particular moment, nor of food, and there were no plates on the tables. Everybody was drinking. Mr. Malkiewicz did not order either drink or food. The proprietors were not on the premises.

On the 28th of June Mr. Malkiewicz visited the premises in the company of Inspector Popovich who was taking over inspection, and spoke about the matter to Mr. Werchohlad, who said the practice would cease.

Another letter dated July 8th, 1977 was addressed to Messrs Werchohlad and Smith by R. W. Cooper in the exact terms of the letter of June 15th.

On Sunday, August 7th, 1977, Inspector Popovich visited the premises. His report states:

" the lounge area was occupied by 29 people, no evidence of proper meals, just French fries and beef on a bun. No one was in the dining lounge.....Infracton of Sunday regulations explained to Messrs Werchohlad and Smith,

Licensees. I advised the practice must cease. Mr. Smith said he would comply with the regulations."

On Sunday, January 8th, 1978, Inspector Ken Brooks visited the premises at 1:15 p.m. and entered the lounge. He sat at a table where there were place mats and a tent menu. On ordering a bottle of beer he was advised that "he would have to have some food." When he told the waitress he wasn't too hungry, she replied that he could not have the beer unless he had food. He ordered a grilled cheese sandwich for 80¢. After the order was placed the beer arrived, and then the sandwich. He ate half the sandwich and kept ordering beer and consumed 4 bottles by 3 p.m. when he left. There were 17 patrons present eating sandwiches and hamburgers. He noted that 5 persons left and 5 persons entered during this period. There were a bar man and 2 waitresses present. He did not enter the dining lounge.

Mr. Brooks did not think a grilled cheese sandwich was a meal in the particular case. He said if he were ordering a "meal" he'd order a hot meal to include more than one entree - some type of meat, potatoes, vegetables, bread and butter.

After the establishment was in full operation, Steve Werchohlad began to assume an attitude of excluding Arthur Smith from a visible and responsible role in the management of the affairs of the hotel. This was not acceptable to Mr. Smith, and a strained and difficult situation arose between them.

Arthur Smith then initiated conversations that the partnership be dissolved, and that one party purchase the interest of the other. Negotiations during July and August culminated in a showdown on the 11th of September, after which Arthur Smith assumed the role of manager of the hotel. The partnership thereupon came to an end. He took over on the Tuesday following the 11th of September with the ultimate transfer of the licence solely to himself on the 9th of November, 1977.

Arthur Smith said that he became aware of a complaint respecting a June Sunday operation inadvertently when he saw the letter of R. Cooper a week or so later. When he spoke to his partner, Werchohlad, he was advised that there was no problem and that it was straightened out. He saw only one letter.

Mr. Smith evinced at the Tribunal hearing a pride in his ability to operate a successful and popular dining facility, and particularly to cater to the needs of St. Catharines residents on Sunday, and a determination to comply with the regulations relating to Sunday food service.

The rules relating to the service of food and liquor in Ontario have been varied in their development.

The history of the regulations in this regard show that the Lieutenant Governor in Council is no longer defining a meal, whether in saying what it is not, or in saying what it is.

Opinions expressed both on behalf of the Liquor Licence Board and on behalf of the licensee and views as to the evidence placed before the Tribunal indicate that there is no clear understanding, and a wide disparity as to what constitutes a "meal" within the meaning of Regulation Section 62.

A dictionary definition of "meal" is:

- (1) one of the regular occasions during the day when food is taken, as breakfast, lunch, or supper.
- (2) the food served or eaten at such occasions.

The foregoing definition of "meal" is very broad; indeed, it appears to be all-encompassing.

It is likely that if a large number of individuals were to be asked what they had as a meal at lunch on the day before, the answer would be likely as disparate in items, quantity, and the like, as the number. North American dietary habits as exemplified by resort to fast food facilities is indicative that an attempt to have a specific definition of a meal in specifics in contemporary times is most difficult.

The Tribunal is of the opinion that a reading of various sections of the regulations regarding the service of food, which term is a comprehensive word for consumables, and the history of the regulations respecting food and "meal" leads to the requirement that the phrase "having a meal" must be given special interpretation in total and that an understanding of what was intended is not dependent upon a definition of the single word, "meal".

The Tribunal interprets that phrase to mean that only when a person is in the course of "having a meal" (regardless of what the "meal" consists of) is it permissible for the licensee to serve liquor to such person.

The Tribunal interprets the regulation to require that in the service of liquor to a person having a meal, the liquor must be an ancillary to the meal. Further, the Tribunal holds that where a patron is persuaded or required to eat in order to have service of liquor that is not compliance with the regulation, and service of liquor under such circumstances is not the act of serving liquor "to a person having a meal."

The Tribunal finds that with respect to the

operation of the establishment on Sunday, June 5th and Sunday, June 26th there were clear breaches of Regulation 6(2). On the former date Investigator Henderson was served beer, clearly not having a meal for he had had no food of any kind, and there were 12 patrons sitting at the bar with no food at hand. On the latter date there were about 45 patrons drinking, clearly not having a meal for there was no evidence of food and there were no plates on the tables.

The Tribunal finds the evidence as placed before it relating to the particular service of food made on Sunday, August 7th, does not warrant a finding of a breach of Section 6 (2) on that date.

The Tribunal finds that the service of liquor on Sunday, September 11th after a requirement that food be had, was, under the circumstances, a breach of Section 6(2).

The service on Sunday, October 16th on the eve of the Board hearing, indicates a clearer demonstration of compliance with the said section. The Tribunal noted with interest the service of 2 steak dinners in the dining lounge on this date, being the first service in the dining lounge on the Sundays being considered given in evidence.

The Tribunal finds that the service of liquor on Sunday, January 8th, 1978 to Ken Brooks to be in breach of Section 6(2). The service of bottles of beer to a total of four does not constitute compliance with the requirement "liquor shall only be served to a person having a meal". Four bottles of beer cannot be considered ancillary to a meal consisting of one grilled cheese sandwich. This is highlighted by the fact that one half of the sandwich had not been eaten when the 4th bottle was served. The waitress was now acting on behalf of the licensee, Arthur Smith, and he bears the responsibility therefor. The licensee consequently is in breach of a condition of the licence.

On behalf of Mr. Smith it is presented that because of the unusual and difficult relations which existed as to the partnership, he ought not to be penalized for breaches which occurred prior to his assuming responsible management on or about the 13th of September, 1977.

In the light of the circumstances portrayed by the evidence before it, the Tribunal is sympathetic to this representation. The Tribunal is mindful that the Liquor Licence Act is basically regulatory and since Mr. Werchohlad who took unto himself the management of the premises is no longer a licensee, he as the person assuming responsibility for the operations that led to breaches is no longer within the regulatory process. However, Arthur Smith must bear fully the responsibility for the operation after that date.

The Tribunal accepts as genuine his statement as licensee with respect to his determination to operate an establishment of high standard and in accordance with the regulations.

The Liquor Licence Appeal Tribunal will alter the decision of the Liquor Licence Board by changing the order dated the 18th day of October, 1977, to an order that the lounge licence issued to Arthur Smith be suspended for one Sunday to be designated by the Liquor Licence Board, and the Tribunal so orders and so directs the Liquor Licence Board.

WHEAT SHEAVES TAVERN, St. Thomas

Lounge Licence
issued to
331774 Ontario Limited
APPEAL FROM SUSPENSION*

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: D. R. NASH representing the Licensee
S. A. GRANNUM representing the Liquor Licence Board

DECISION: 16 March, 1978

331774 Ontario Limited, Licensee (#012158) and appellant herein carries on business under the name and style of Wheat Sheaves Tavern, and operates under that name premises classified as a tavern located at 40 Station Street, St. Thomas.

When the licence holder acquired the establishment in May, 1976 it was classified as a public house and public house licences were issued in respect thereof.

Upon application, there was issued in July, 1977 to 331774 Ontario Limited in the stead of the public house licences, a lounge licence (Serial #8442) in respect of 3 rooms on the main (ground) floor located as follows:

1. Main Floor: north centre section
(referred to herein as Lounge 1)
2. Main Floor: southeast section
(referred to herein as Lounge 2)
3. Main Floor: northwest section
(referred to herein as Lounge 3)

with capacities of 39, 23, and 38 respectively for a total designated capacity of 100. Lounge 2 has a pool table and pin-ball machines which reduce the designated capacity thereof by 9 to 14, making the effective designated total lounge capacity 91. A bar more than 10 feet wide at the south end between Lounges 1 and 3 serves all three lounges. There are 3 stools at the bar. There is a space 7 feet deep before the bar, creating a space and passageway between Lounges 3 and 1. The lower end (one-third) of Lounge 1 is open to Lounge 2. There are entrances to all three lounges from the outside. A full if not complete view may be had of the 3 rooms from the bar area.

Except for the suspension of the licence by the Liquor Licence Board on the 24th of November, 1977 which is the subject matter of this appeal, the Board has never suspended or revoked licences issued to the licensee, nor has the Board at any time disciplined the licensee or the management.

On the 21st of October, 1977 the Liquor Licence Board issued a proposal to SUSPEND for a period of ten(10)days the lounge licence issued to the licence holder for the following reasons:

"The licence holder has carried on activities that are contrary the regulations under the Act, particulars of which are as follows:

a) On Saturday, September 24th, 1977 around midnight and Saturday, October 8th, 1977 around midnight, the officers and employees of the licence holder failed to ensure that the premises was not overcrowded, pursuant to Section 5, subsection (12) of the Regulations.

b) On Saturday, October 8th, shortly after midnight, there were two patrons seated at the bar in an apparently intoxicated condition.

c) At 1:40 a.m. of the following day, patrons were consuming liquor on the premises and the licence holder had failed to remove all evidence of the service and consumption of liquor as required by Section 6, subsection (20) of the Regulations."

After a hearing requested on behalf of the licence holder the Board, on the 24th of November, 1977 found that the licence holder

has carried on activities that are contrary to the Regulations and, in particular, Section 5 Subsection (12) and Section 6 Subsection (20) and (21) of Regulation 1008/75 under the Liquor Licence Act,

and ordered

that the 'Lounge' Licence granted to 331774 (Ontario) Limited in respect of the Wheat Sheaves Tavern, be "SUSPENDED" for the period commencing at the opening hour, Monday, December 12th, 1977 and to continue in effect until the closing hour Saturday, December 17, 1977.

Relevant sections of Regulation 1008/75 under the authority of the Liquor Licence Act 1975 are as follows:

Section 5

(4) No holder of a licence shall permit any gambling that is contrary to the criminal code (Canada),

drunkenness, or any riotous, quarrelsome, violent or disorderly conduct to take place in the licensed premises.

(12) Every holder of a licence shall ensure that no more persons than the stated capacity of the licensed premises as set out in the licence shall be present in the licensed premises at any one time.

Section 6

(1) Except for Christmas Day and Good Friday, liquor of the type authorized by a licence may only be sold and served in the premises for which the licence is issued between the hours of 12 noon and 1 a.m. of the following day on Monday to Saturday.

(20) All evidence of the service and consumption of liquor shall be removed within one half-hour after the sale and service of liquor ceases in a licensed premises.

(21) Every premises for which a public house licence or lounge licence is issued shall be cleared within one half hour after the sale and service of liquor ceases.

Mr. John Wright, an inspector of the Liquor Licence Board for some fifteen years, all in the St. Thomas area, testified as to a visit to the establishment on the night of Saturday, September 24th, 1977, entering the premises at about 12:35 a.m. on the 25th of September. From the street he entered Lounge 3 which he estimated was filled to capacity. Another inspector was to testify that even with 47 persons in Lounge 3, (i.e. 9 more than stated capacity) it did not give the appearance of congestion. Within the lounge, Inspector Wright moved to the side of and then behind the bar, the area about which was very crowded. His description was that the rooms were "jammed well over the allotted capacity". After a stay of six minutes he proceeded to the police station and, accompanied by police officers, returned to the premises at 12:56 a.m. moving to the bar area.

He estimated that in total some 200 persons were on the premises. He did not make a count. In the table areas the congestion was not great though all tables had patrons seated at them and persons were standing throughout the 3 rooms. At and about the bar and in the games area there was a great deal of crowding and congestion. Patrons sought service at the bar before it was cut off. There were only 2 bartenders with no waiters apparent. The chief officer of the licence holder, Eric Wheat, was not on the premises.

Mr. Nash on behalf of the licence holder was to place emphasis on the fact that no exact count was taken.

Though such a count would be helpful, it is not a necessity. This is particularly so when there is on the evidence such a disparity between what is a designated capacity and what is viewed. The estimate of the inspector, experienced and familiar with the premises, of 200 persons present in an establishment where the designated total capacity is 91, provides clear evidence that more persons than the stated capacity were present on this occasion in the premises, and the Tribunal so finds.

On Friday, September 30th, John Wright, in the company of Ross Campbell, a supervisor of inspectors for 6 years with the Liquor Licence Board, attended with Eric Wheat to discuss with him the incident and matter of overcrowding.

Mr. Roy Henderson, an investigator with the Liquor Licence Board whose duty it is to make random spot calls upon licensed premises and report to the Board, testified as to a visit made to Wheat Sheaves Tavern on the 8th of October, 1977. He attended at 3 p.m., was seated in Lounge 1 where there were six patrons, and left at 3:45 p.m., noting no infractions. He attended at 8:50 p.m., entered Lounge 3 where there were some 14 patrons, and left at 9 p.m. noting no infractions.

He returned at 12:20 a.m. (now October 9th) and took up a position at the west side of the bar in Lounge 3. He counted 47 patrons therein, a definite excess of 9 over the stated capacity of 38. Lounges 1 and 2 were, in his opinion, filled to designated capacity - all seats being occupied, with a further 30 persons standing at and around the bar area. Checking the form descriptive of the premises, he estimated that the stated capacity was exceeded by 35-40 persons. There is accordingly before the Tribunal, clear evidence that more persons than the stated capacity were present on this occasion in the premises, and the Tribunal so finds.

Mr. Henderson noted several patrons who, in his opinion, were drunk. During a passage of time of 15 to 20 minutes, he noted 2 male persons seated at the bar who had been served drinks of rye whiskey and coke just before the "last call" prior to 1 o'clock. They thereupon exhibited actions upon which he based a conclusion that they were drunk, namely, they hugged one another, were incoherent, and shouted obscenities. Inspector Henderson noted that despite the real efforts of 3 male employees (one who had been at the bar, one who had served at tables in all 3 lounges, and one who had assisted the latter) there was difficulty in clearing the premises by 1:30 a.m. Inspector Henderson left at 1:40 a.m. at which time he noted beer and other drinks still on tables. At leaving he noted some 6 persons whom he took to be patrons sitting at a table having a drink.

Eric Wheat, an officer and shareholder of the licence holder, testified that on October 9th at 1:15 a.m. he came to the premises and noted some 20 to 25 persons in the room and that everything was going quite normally. He expressed the view that at 1:25 a.m. there was no one in the premises. His explanation for the scene of persons drinking after 1:30 a.m. was that it was himself and his staff having a relaxing drink together at the ending of the day's work, i.e. enjoying, in the language of the vocation, "quitters" - a practice which ceased when the local inspector reviewed the matter with him.

Mr. Wheat testified that it was the practice in the operation that "last call" was at 12:45 p.m. and the bar was closed at 1:00 a.m. After the complaints of overcrowding, late in October he employed a man to control the number in the premises.

The Tribunal finds in respect of the nights of September 24th and October 8th that the licence holder did not ensure that no more persons than the stated capacity were present in the licensed premises at any one time. The term and condition of the licence as expressed in Regulation 1008/75 Section 5(12) which provides that the holder of the licence "shall ensure" no more persons than the stated capacity to be present means that the licence holder shall make certain such a situation shall not arise, which in turn, requires measures to be taken - which was not the case either on the nights of September 24th to 25th and October 8th to 9th. A measure - the hiring of a doorman to look after this requirement - was taken subsequently.

The Tribunal finds that the description of the 2 patrons at the bar on the night of October 8th to 9th was that of drunkenness and that it was permitted by the licence holder. The description of the actions of the 2 young men were more than that of youthful exuberances. Accordingly, there was a breach of the condition set out in Regulation 1008/75, Section 5(4).

The Tribunal finds that the glasses of beer were on tables at 1:40 a.m. on October 9th, i.e. ten minutes subsequent to the half hour following the cessation of the sale and service of liquor at 1:00 a.m. as required by Regulation 6(1). Accordingly, the licence holder was in breach of the Regulation Section 6(20). It is evident that the procedures followed and the number of staff present on this occasion were not such as to enable them to cope with the requirements set out in the Regulations.

Under the circumstances outlined by Mr. Eric Wheat, the Tribunal makes no finding with respect to the persons in

the premises at 1:40 a.m. on October 9th.

The Liquor Licence Appeal Tribunal hereby confirms the decision and the Order of Suspension of the Liquor Licence Board of the 24th of November, 1977, and hereby directs the Board to set the exact period of suspension. *

*NOTE: The above decision was appealed to the Supreme Court of Ontario (Divisional Court).
The appeal was dismissed.

MARINER'S AND SAILOR'S PUB TAVERN, Toronto

Dining Lounge Licence, Lounge Licence, and
Patio Licences
issued to
Stoodleigh Mariner Limited
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM, and
BARBARA J. SHAND, MEMBERS

COUNSEL: H. J. MURPHY, Q.C. representing the licensee
S. A. GRANNUM representing the Liquor Licence
Board

DECISION: 11 May, 1978

Stoodleigh Mariner Limited is the licensee (090817)
of the establishment classified as a tavern known as Mariner's
and Sailor's Pub Tavern at Ontario Place, 955 Lakeshore Blvd.
West, Toronto.

The licences issued to the licensee are in respect
of the following 2 main areas of operation with a capacity of
some 400 persons:

MARINER'S (restaurant) - (dining lounge licence
#2763) in respect of 2 rooms located
1. Main Floor, south-west section (Mariner's)
2. Mezzanine, east centre section (Mariner's)

In respect of dining lounge - (patio licence
#16336)
Main floor, outdoor area, centre section

SAILOR'S PUB - (lounge licence #7418)
in respect of room located
Main floor, south-west section

In respect of lounge - (patio licence #18964)
1. main floor, outdoor area, south-east centre section
2. main floor, outdoor area, south-east section.

The licensee also operates an unlicensed snack bar known as the
Galley located on the outside of the main premises.

The establishment has been in operation since 1971 - the inception of Ontario Place. In accordance with an agreement with Ontario Place Corporation, the concession may be operational by the 7th of May and shall be operational by the Saturday prior to Victoria Day (May 20th in 1978) and is to cease operation on the 1st Tuesday following Thanksgiving Day (October 10th in 1978). The designated minimum period in 1978 is 143 continuous days.

Terms and conditions of the licences are set out in Ontario Regulation 1008/75 including the following relevant provision: Section 5(4) No holder of a licence shall permit any gambling that is contrary to the Criminal Code (Canada), drunkenness or any riotous, quarrelsome, violent, or disorderly conduct to take place in the licensed premises.

On the 29th of September, 1977 the Liquor Licence Board issued a proposal to SUSPEND for a period of ten (10) days the Dining Lounge, Lounge, and Patio licences for the following reasons:

"On or about June 11th, 1977, July 22nd, 1977, and August 9th, 1977, employees of the licence holder did permit drunkenness and disorderly conduct to take place on the licensed premises. On each of the above dates patrons on the premises were in an intoxicated condition as a result of the excessive consumption of liquor, and on June 11th, July 22nd, and August 9th, 1977 fighting ensued in the premises. The licence holder is in breach of a term and condition of its licence and in particular Section 5 subsection (4) of Regulation 1008/75 under the Liquor Licence Act, 1975."

After a hearing November 29th, 1977 the Liquor licence Board found

"that the licence holder has carried on activities that are in breach of a term and condition of the licence and in particular, Section 5 subsection (4) of Regulation 1008/75 under the Liquor Licence Act, 1975."

and ordered

"that the 'Dining Lounge', 'Lounge', and 'Patio' Licences granted to Stoodleigh Mariner Limited in respect of the Mariner's & Sailor's Pub Tavern, be "SUSPENDED" for the period commencing on TUESDAY, JUNE 6TH, 1978 and to continue in effect until the closing hour on SATURDAY, JUNE 10TH, 1978."

The Mariner's (Restaurant) and Sailor's Pub were originally fitted into one of the unique structures (modules) created for Ontario Place. Substantial leasehold improvements were made by the licensee at the beginning. As the popularity

of Sailor's Pub grew, structural changes were made by the licensee of its own volition in order to facilitate management and control in entry and surveillance of patrons. The Pub was extended into the patio area of the dining lounge; the pub's largest dimension is about 60 feet. The capacity of the Pub is 240 persons.

The partitions, floor to ceiling internal and external, are in the main of glass. Each main operation has a separate outside main entrance. The entrances are some distance apart and have different approaches. There is no physical internal link between the two operations except a passageway leading to common washrooms. A door at each end of the passageway gives access to the distinct areas of operation. It is physically possible to proceed this way from one area to the other, but in actuality, this does not occur. Though adjacent to each other the 2 areas can be viewed as separate operations.

The concept in the Mariner (Restaurant) makes extensive use of the view onto Lake Ontario and blends a marine atmosphere into the modern shape and form of the interior. There is full table service. The adjoining patio where snacks are served reflects the design and decor of the restaurant.

The decor and theme of Sailor's Pub is also nautical, carpeted, panelled, with wooden captain's and mate's chairs, square and round tables, and benches around the perimeter. The environment is causal, costumed bar girls emphasize the pub atmosphere. Its patio reflects the design and decor of the pub. There is full bar service featuring draft beer and beer in bottles, including quarts.

The clientele in each of the 2 areas is quite different. The Mariner's Restaurant attracts a clientele which is of the business, senior citizen type. The Sailor's Pub attracts a youthful exhuberant clientele. There is a marked difference in the ambience of the 2 operations. The atmosphere of the Restaurant is peaceful, with light background music. The atmosphere of the Sailor's Pub is one of high spirits and extreme informality.

Each operation has responded to satisfying the varying tastes of the spectrum of persons attracted by Ontario Place's well-known image as a place of relaxation, fun, and entertainment.

Of 8 establishments at Ontario Place, Sailor's Pub is one of the most attractive to the younger set, i.e. ages 18 to 25. The measure of success of Sailor's Pub in appealing to and meeting the desires of a segment of the public is attested to by the presence from time to time of young persons standing in line for up to 2 hours to gain admittance. The

lineups occur generally on weekends when a Rock & Roll concert has taken place at the Forum when the music and atmosphere are especially attractive.

The employees, apart from management, are in the main seasonal and consist of 95% university students whose employment is actively encouraged by Ontario Place officials. Some 140 employees were selected out of 8 applicants for each job, with a re-hiring of those whose previous performance had been satisfactory.

The service of beer in the Sailor's Pub is given by 60 waitresses working in shifts. Some 6 young men of the 'football type' are assigned to control duty at the entrance and throughout the pub.

Staff were instructed in their duties. They were told there was to be no service to intoxicated persons, and if a situation arose, the supervisor was to be advised. It was the role of the 'football types' to deal with those deemed in the 'not-to-be-served-any-more' category by virtue of being too boisterous. In practice most patrons so deemed left voluntarily; in some instances action had to be taken to bring this about.

The Sailor's Pub in the aspects of those who serve and those who are served, is a place of very young adults.

Stoodleigh Mariner Limited is a contemporary vehicle of a food service operation that goes back 75 years and which is now well into the second generation of management. The Ontario Place operation is a recent aspect of a significant record of related operation of various food facilities: of restaurants in downtown Toronto, major 'in plant' cafeterias, C.N.E. concessions through 50 years (including the first licensed establishment some 14 years ago), and special occasion functions at international and trade fairs. The Mariner (Restaurant) is in keeping with the traditional operation of the Stoodleigh 'group'. The Sailor's Pub is significantly different and novel in its total operation.

The history of the above operations can be described as being impeccable, and the name Stoodleigh has been synonymous with quality and service of the highest kind.

There was no occasion of complaint or discipline of those associated with the licensee in licence-related operations through the years, and the present allegations are the first occasion in which the Board has acted.

The affairs of the licensee corporation are guided by 3 individuals operating as a team, and loosely described as a partnership with the following associates:

Mr. T. Michael Barber, President,
Mr. Bill Taylor, Vice-President,
Mr. George Arnold, Vice-President.

Each was involved in related corporations, and the three set out the policies of the total operation, including Mariner's and Sailor's Pub. The time of each is fully devoted to direct participation. There was an attempt made as a matter of practice that one of the above would be visibly on duty at the licensed premises. A significant and respected member of the permanent staff was Edward Olsen, 63 years of age and an employee of some 40 years, in whom management placed confidence. The Tribunal finds his role at the Sailor's Pub as being a manager and to be considered 'in charge' in the absence of the 3 associates on behalf of the Corporation.

Inspector Leslie, an inspector with the Liquor Licence Board for 3 years, testified with respect to his inspection of the licensed premises during the seasons of 1976 and in particular during 1977 which had consisted of some 18 visits. There was special attention because of the atmosphere of Ontario Place generally, and of certain facilities specifically. He had visited the premises on June 7th and June 15th and at 1:40 p.m. on August 9th. On other occasions visits had been made at 8:30, 8:45, 9:20, and 11 p.m. on various days of the week. His inspections revealed no problems. Any suggestion made was well received. On all his visits one of the 3 associates was present on the premises and he was kept advised on the operation. His general observation was that on his visits the premises were well policed, and his assessment was that there was good control, noting that it was done by "strapping six-foot fellows" at the exits and two or three in the lounge. He agreed that the onus of responsibility on the part of management is far greater in Ontario Place establishments than in a neighbouring hotel lounge because of the carnival atmosphere.

The allegations relate to incidents on 2 separate dates - June 11th and August 9th, 1977; no evidence was tendered in relation to July 22nd as referred to in the proposal by the Board.

During the course of the evening of June 11, 1977, a young man was requested to leave the Sailor's Pub, and he did. One hour later he returned and was refused entry. He went around the corner and kicked in a large 7' x 7' external glass partition, leaving large jagged edges. Mr. Taylor instructed Edward Olsen to contact the OPP. In the meantime 5 foam plastic chairs were brought from the dining lounge patio and placed along the inside of the broken window, and male personnel ordinarily posted at the entry were stationed there protecting the area. Mr. Taylor assisted.

Constable W. Garnett of the OPP responded to a radio call advising of a disturbance at the door of Sailor's Pub. Upon arrival he noticed the broken glass, asked at the door who was in charge that evening, and was directed by the doorman to Edward Olsen who was glad to see him. Constable Garnett testified that of some 200 patrons, most were crowded at the end of the lounge away from the glass window, creating congestion there.

Some were standing on tables and chairs and along the benches in the area where there was entertainment being provided on a stage along the wall. The constable related that a folk singer with a P.A. system could hardly be heard over the noise of the patrons. An alternative explanation was that the persons were standing in order to view the commotion at the broken glass area. In any event, the Tribunal is of the opinion that the described conduct by itself, under the circumstances though a little out of place, did not warrant a finding of a breach of any part of Section 5(4) of the Regulation.

At 11:30 Constable Garnett asked that the premises be cleared and Edward Olsen agreed and cooperated without hesitation. He enlisted the support of some of the male employees. By 12:10 the patrons, some not happily, had left. Though no one resisted the request, the announcement for clearance was repeated 3 times. Again, the Tribunal is of the opinion that the time factor in itself does not warrant a finding of a breach of any part of Section 5(4).

As the patrons were exiting, Constable Garnett counted 43 males and females whom he concluded were intoxicated in that they were staggering. He particularly noted that 2 patrons had to be assisted physically by 2 other persons in leaving.

Constable Garnett testified that he believed Edward Olsen to be slightly intoxicated in that he was flushed, his eyes were glassy, and there was odour of liquor on his breath.

The Tribunal does not find that Mr. Olsen was intoxicated; he was not impaired in the carrying on of his duties or otherwise; indeed, his response to the constable indicates this. The Tribunal does note for the management the potential danger in not ensuring that employees rigorously abstain from consuming liquor while on duty.

Mr. Taylor, described as reserved by nature, did not communicate with the constable during his visit, leaving the matter in the hands of Edward Olsen. The Tribunal believes that it would have been good practice on the part of Mr. Taylor to have involved himself in the matter directly and contin-

uously; he likely would have been apprised of the assessment the constable was making of the condition of the patrons and of Mr. Olsen. It is noteworthy that Mr. Taylor in his own testimony acknowledged that staggering and needing help were signs of drunkenness.

The Tribunal finds that on the night of June 11th there were a number of persons in a state of drunken condition in Sailor's Pub, a licensed premises.

On the night of August 9th, 1977 as a result of complaints, Sailor's Pub came under an organized surveillance by members of the Metropolitan Toronto Police Force. Constable Heather Irving, attached to the plain clothes division, testified that accompanied by Constable Neeson, she arrived at 10 p.m. They took places at a table near the centre at the east side of the lounge and had an area of observation of about 25 feet radius.

She saw 4 males ages 19 to 23, seated at the next table some 4' away and from her observations she concluded that they were in a drunken state. One male was drinking out of a quart bottle of beer. His eyes were red and glassy and his eyelids kept partially closing. He was argumentative and used obscene language. He spilled beer on the floor. He was unsteady upon standing. Another male appeared intoxicated at their arrival. He was drinking from a quart bottle and a glass. He was using loud obscene language which was slurred. He jumped up and knocked a quart bottle to the chair and floor, spilling beer there and upon himself. He was very unsteady; his eyes were red and glassy. A third male also appeared intoxicated at their arrival. He kept dropping his head down at the table and seemed to have some difficulty in trying to keep awake. His speech was slurred. A fourth male at that table also appeared intoxicated on their arrival. He was drinking from a quart bottle, having no glass, and kept spilling beer down the front of his body. His speech was slurred and he used loud and obscene language. He was unsteady and staggering when on his feet.

Each of these males were served by a waitress (age 18 to 20) with an additional quart of beer on 3 separate occasions: at 10:30, 11:10, and 11:40 p.m.

Another male to the north with a large group of people was observed to be in a drunken state. He stood up, took a glass, then dropped the glass and fell back into his chair. Though at a distance he could be heard in argument. He was drinking from a pint. He was served 3 times by the same waitress who served the other 4 males seated together.

Except for the waitresses Constable Irving saw no one who appeared to be employees except a woman who appeared to be a hostess, and a heavy-built man at the bar area.

Neither walked about, nor took any action except that the woman took patrons to available tables.

The lounge was very full with about 150 patrons, none of whom complained about anyone's behavior.

Constable Neeson testified in similar fashion, adding that there was banging on the table and that one male became obviously progressively drunk. He clarified that there was no fighting but that there was argument. There was a male employee at the entry door and the premises appeared well staffed. No one was stopped from drinking or ejected. He did not consider drinking out of a quart bottle a criterion for drunkenness.

Constable Cadorn of the Metropolitan Toronto Police testified that accompanied by 2 officers he arrived at 10 p.m. and took up observance. He noted a table at which were seated 3 males and 2 females, ages 18-20 who were laughing and talking loudly. The males were cursing. At 10:15 he noted that a male who got up to go in the direction of the washroom walked into a metal support pole. Upon following him into the washroom, he saw him at a urinal swaying back and forth and performing a body function with difficulty. At 10:55 the male was served a pint of beer by a waitress 19-20 years of age. As he stood up to reach into his pocket to pay, he fell back against a partition. At 11:15 the table was again served. At 11:30 the same male on his way again into the washroom, walked into a person coming out.

At 11:45, Constable Leitch who was in charge of the police operation, arrived at the premises with some 23 police members. A small number entered and took action, laying charges against the individuals pointed out by the observing officers. A male standing at the bar fell against it and had to be assisted.

There was no hostility from the crowd. Arnold had left at 9 p.m. Edward Olsen was in the lounge throughout that evening. Constable Leitch spoke to a young man who approached him and was advised that Mr. Olsen was in charge.

Constable Leitch testified that Mr. Olsen's breath smelled strongly of liquor. The Tribunal does not find that Mr. Olsen was impaired in the carrying on of his duties.

The Tribunal finds that on the night of August 9, 1977, there were a number of persons in a state of drunken condition in the Sailor's Pub, a licensed premises.

The Tribunal accepts the categorizing of the Liquor Licence Act

"as one of the statutes enacted for the regulation of individual conduct in the interest of safety and the general welfare of the public"

and that

"the particular purpose of the Liquor Licence Act is to regulate the operation of licensed establishments and conduct within them. Specifically, the scope and purpose of sections....is to restrict in some respect the freedom of choice which otherwise the licensee would have in the sale and supply of liquor and to cast upon the licensee the duty to obey the provisions which would be breached by its own positive acts and to enforce the observance by others of the standard of conduct conforming to the requirement of the Act". R.v. Royal Canadian Legion 21 D.L.R. (3d) 148

Present regulations make as terms and conditions - a duty on the licensee to ensure that in the conduct of the business authorized by the licence, certain specified acts do not occur. When the act sought to be prohibited is that of a customer, the only way in which the responsibility of the licensee can be expressed is to impose upon the licensee the obligation not to permit or suffer the undesirable conduct, in this case, drunkenness.

The Court of Appeal of Ontario in R.v. Royal Canadian Legion (SUPRA) interpreted a statutory section similar to Regulation 5(4) as being

"no person holding a licence under this Act shall not prevent in the premises for which the licence is issued - drunkenness".

The Tribunal has heretofore accepted that interpretation. The conduct of a holder of a licence that would constitute a breach of the term and condition of a licence in permitting drunkenness is that of not preventing drunkenness.

The Court of Appeal of Ontario in Regina v. Dovco Holdings Ltd. 34 C.C.C. (2d) 324 held

"if a licensee genuinely believes that he has prevented drunkenness on the premises by taking appropriate measures to that end, which he has no reason to believe have been inadequate, and drunkenness occurs on the premises without the knowledge of the employee who was the alter ego of the corporate licensee on the premises at the time the alleged offences occurred, then the corporate licensee would not be guilty of permitting drunkenness".

The management of Stoodleigh Mariner Limited was aware of the difficulties inherent in the operation of an establishment such as Sailor's Pub. It had made physical changes to enable better control and management. It had established a 12:30 closing (1/2 hr. earlier) and a 11:30 cutoff (1 hour earlier). It had employed young men of an appearance that would command respect: their purpose was to keep order. Though these steps are commendable they did not constitute a sufficient discharge of the obligation that is placed upon this holder of a licence with respect to preventing drunkenness. Management should have ensured that personnel would be continually monitoring the clientele to act on the appearance of any behavior related to too much consumption. It is true that serving staff were instructed not to serve those deemed to have had enough. However, there was no evidence that there was stress placed on the instruction. There had been no followup that the instruction was carried out. Indeed, the placing of an obligation of such a difficult judgement on the young waitresses alone should have been foreseen as an inadequate measure. The waitresses referred to in the incidents of August 9th must have known that certain of the the patrons they were serving had become intoxicated. No supervisory procedures were apparent to prevent or to stop any incipient instance of drunkenness.

The atmosphere of Ontario Place is indeed one of fun and relaxation and an environment in keeping is acceptable for the establishments. And management should know that such an environment and the exuberance of young people (probably in the very early stages of enjoying and coping with alcoholic consumption) are a combination that creates a situation that needs special attention.

The Tribunal is of the opinion that with proper and emphasized instruction, and supervision, the calibre of summer employees at Sailor's Pub is such that they would be fully capable of performing the duties in accordance with the Act and Regulation. The additional difficulties, the greater onus of responsibility created, are not a source of excuse, but on the contrary, form a necessity for measures to meet those difficulties and onus. That Sailor's Pub is unlike other licensed establishments means a requirement of measures that go beyond those adequate in other establishments.

Management should be aware that the consumption of liquor by young people has increased to such a degree that it is causing general concern. The privilege (in this instance the special privilege of a lounge licence) extended to licensees for the sale of liquor carries with it a very severe responsibility. The adequacy of measures taken to discharge that responsibility should be measured by the exigencies of the particular situation. The enforcement of observance by young people of the standard of conduct set down in respect of

the consumption of liquor requires unrelenting vigilance and measures appropriate thereto by the licensees who find themselves catering to them.

At the Sailor's Pub, the corporate licensee was represented by one, Edward Olsen, who, if not considered to be an associate in the conduct of the total affairs of the corporate licensee, must be considered as one at the top managerial level. He was an agent of the licensee. His action and intent therein would be the action and intent of the corporation.

On the night of June 11th, Mr. Taylor, one of the management team, was on the premises of the total establishment. During the whole evening, Edward Olsen was in the Sailor's Pub. It is clear that the authority and responsibility for the operation within the Sailor's Pub had been placed on Mr. Olsen. Constable Garnett dealt with him after arrival. The condition of the 43 patrons that led him to assess them as intoxicated, and the condition of 2 of the patrons was such that in the proper discharge of Olsen's duties, he must have known that drunkenness had taken place.

On the night of August 9th, Arnold, one of the management team, had left the establishment. It is clear that Edward Olsen was left in charge of the Sailor's Pub and that the responsibility and authority in its operations was his. Constable Leitch dealt with him after arrival. Again, the condition of some of the patrons was such that in the proper discharge of his duties he must have known that drunkenness was taking place, and that not only was it not being prevented, it was being aggravated in that service was being continued to those who were in that condition. Mr. Olsen was cognizant of difficulty in controlling young people.

The Tribunal finds that on the nights of June 11th and August 9th, drunkenness on the premises of Sailor's Pub was permitted by the 'alter ego' and other employees of the licence holder thereof.

The powers of suspension by the Liquor Licence Board are set out in the Liquor Licence Act, 1975, Section 11(3) which states in part:

"....the Board...may suspend a licence granted under Section 6....where the licensee is in breach of a term or condition of the licence".

The Tribunal finds that licensee, Stoodleigh Mariner Limited, was in breach of a term or condition of the Lounge Licence #7418 set out in Ontario Regulation 1008/75 Section 5(4) in that as licence holder it permitted drunkenness in premises licensed under the said licence.

Though the operation of Sailor's Pub is novel to the total scope of the operations of those associated with the licensee corporation, sufficient seasons have passed that they must be taken to be fully familiar with what is inherent in the operation of an attraction like Sailor's Pub. Their impeccable record and excellent reputation in contemporary catering endeavours and those of their predecessors and that this is a first offence do not excuse the incidents.

The Tribunal confirms the Order of Suspension of the Liquor Licence Board in respect of Lounge Licence #7418 and Patio Licence #18964. Patio Licence #18964 is by Section 4(1) item 7 of Regulation 1008/75, and by its terms related to Lounge Licence #7418 and is dependent upon the operation of the lounge licence.

The Tribunal finds that there is no evidence that the licensee, Stoodleigh Mariner Limited, was in breach of any term or condition attached to Dining Lounge Licence #2763 or Patio Licence #16336 related thereto. The Tribunal revokes the Order of Suspension of the Board in respect of Dining Lounge Licence #2763 and Patio Licence #16336.

LE DOME RESTAURANT, Toronto

Dining Lounge Licence
issued to
Le Dome Holdings Limited
APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON and
BARBARA J. SHAND, MEMBERS

COUNSEL: HOWARD S. KUTNER representing the licensee
S. A. GRANNUM representing the Liquor Licence Board

DECISION: 18 May, 1978

Le Dome Holdings Limited is the licensee (#020485) of the establishment classified as a restaurant known as Le Dome Restaurant located at 21-25 Yorkville Avenue, Toronto.

The licence issued to the licensee on the 21 February, 1977, is a Dining Lounge Licence (Serial #A0226) in respect of a room located on the second floor (south section). The capacity is 122.

Terms and conditions of the licence are set out in Ontario Regulation 1008/75 including the following relevant provision.

Section 6(5) In each premises for which
a ...dining lounge licence is issued
(a) the total receipts from the sale
of liquor in any month shall not exceed
the sale of food in the same month;

On the 19th day of July, 1977 the Liquor Licence Board issued a proposal to

"(1) SUSPEND for a period of ten (10) days
the dining lounge licence of Le Dome Restaurant:
and

(2) attach to the dining lounge licence of
Le Dome Restaurant a TERM and CONDITION that
the sale and service of liquor in the
establishment shall cease at 10:00 p.m."

for the following reasons:

"The licensee is carrying on activities that
are in contravention of Section 6, subsection (5)
of Regulation 1008/75 under the Liquor Licence
Act, 1975 and in particular, the total receipts
from the sale of liquor in the dining lounge
have exceeded the total receipts from the sale

of food in each month during the period commencing March 7th, 1977 and ending May 31st, 1977."

After a hearing on the 8th September, 1977, the Liquor Licence Board found that there had been a contravention of the regulation, and attached to the licence a further term and condition

"that the sale of alcoholic beverages in the 'Dining Lounge' of Le Dome Restaurant shall CEASE at 10:00 p.m. daily until such time as the requirements of Section 6 subsection (5)(a) of Regulation 1008/75 are met."

and directed "that the Area Inspector be provided with a separate record relating to Sunday sales as well as with monthly reports relevant to the food and liquor sales in these premises until further notice."

Le Dome Restaurant on Yorkville is in a well-known specialty shop area of Toronto attracting a great many visitors during the summer tourist season. In the same building as Le Dome are 2 other restaurants, and on Yorkville in the short two-block distance to Bay Street there are 5 other restaurants. Each is licensed as a dining lounge, most have music, and some have dancing facilities; all have some special characteristic that appeals to a particular clientele. In the immediate area are more licensed restaurants.

The premises of Le Dome are located in the back half of a 2-storey building. The premises are carpeted and equipped with a kitchen and bar area. The design of the accommodation is in a two-level amphitheatre style, with a raised area surrounding another service area where there is a small dance floor. The design of the furniture and the decor is contemporary. The tables are small and round. Though sufficient to provide intimate dining atmosphere, the furniture lends itself more to an appearance of a lounge than to a traditional dining lounge. The furnishings do meet the requirements of the regulations for they are "suitable" for comfortable dining, and are common in dining lounges.

There is nightly entertainment in the form of a 'disc jockey' who plays recorded (tape) music for the entertainment of the patrons Sunday, Monday, Tuesday, and Wednesday between the hours of 7 p.m. to 1 a.m. and on Thursday, Friday, and Saturday between the hours of 7 p.m. to 4 a.m.

The affairs of the corporate licensee are guided by Mr. Bruno Carfa, sole shareholder and President. He had no experience in the food business. The expertise was provided by a full-time manager, Mr. Dieter Wolfe, who had been employed in

the hotel-restaurant field since age 14 and who since his arrival in Canada in 1968 had worked in several well-known dining establishments of some rank.

It is clear that the intent of the corporate licensee at the beginning was to operate a disco type restaurant designed to attract the young executive type 25-45 years in age. Dining would be provided, but the ambience would be that of drinking and music for listening and dancing. The promotion was that of disco/dining. The initial hours were 5 p.m. to 1 a.m. Monday to Thursday, and 6 p.m. to 1 a.m. Friday and Saturday. In this regard the restaurant from its opening 4 March did in fact become patronized by a well-dressed 'good', 'dignified' young clientele.

The figures of the first month of operation reflect the above intent and promotion.

<u>Month</u>	<u>Liquor</u>	<u>%</u>	<u>Food</u>	<u>%</u>
March, 1977	11,812.98	70	5,195.17	30

On the 30 March, 1977, Bruno Carfa accompanied by his solicitor, H. Kutner and Manager, Dieter Wolfe, attended before the Board when the Board's concern regarding the imbalance was made known. In addition other matters were discussed, including the following:

1. ...card listing the minimum food charge can be placed on each table.
2. A menu offering a choice of fullcourse meals must be placed on each table.
3. A report of food/liquor sales wherein the Sunday sales will be recorded separately must be submitted to the Board on a monthly basis.

Little change took place in the operations of the establishment in the immediate months that followed.

On 19th July, 1977, the Board issued its proposal.

The sales prior to the Board hearing were as follows:

	<u>Liquor</u>	<u>%</u>	<u>Food</u>	<u>%</u>
Aug. 1977	13,366.38	62	8,075.26	38

Investigator Ken Brooks, employed by the Liquor Licence Board to make spot checks, testified that he had visited the premises at 7 p.m. on September 4, 1977. There were 9 patrons and no one was eating. He was approached by a waitress, and ordered a bottle of beer. He was advised that he would have to have some food. There was a tent menu on the table and she presented him with a further menu. He ordered a sandwich. As the night went on and other patrons came in the food comment was made. A crackers and cheese plate was served as a minimum order.

By 9 p.m. the establishment was filled to capacity. It appeared that waitresses relaxed their food emphasis. No full course meals were served. The bar area became crowded. At 10 p.m. the bar was closed; at 10:15 alcoholic beverages had to be consumed and service items were cleared from the table. Disco dancing was to continue. He left at 10:40 at which time there were 50 persons waiting to get in.

At the hearing the Board's concerns appeared to be the following: Remedial steps to rectify the imbalance had not been taken. A luncheon service (now proposed) should have been a matter of course for a good restaurant operation. There was lack of adequate table service. The establishment appears busiest after 9 p.m., making the operation an "after hours club" rather than a restaurant.

The Board therefore made its order.

At the tribunal hearing there were filed details of subsequent sales including

	<u>Liquor</u>	<u>%</u>	<u>Food</u>	<u>%</u>
Feb. 1978	9,563.00	49	9,872.00	51
Mar. 1978	10,536.68	51	10,267.64	49

An examination of the figures indicate a significant reduction in total dollar sales of liquor, an increase in total dollar sales of food, and percentages generally just short of being equal. Action taken by management since the Board hearing has had its effect.

A luncheon service has been instituted from 11 a.m. - 3 p.m. and the establishment continues to be open with food service available. Menus have been changed three times. A pizza oven has been installed and the service of pizzas has become increasingly popular. Special nights have been initiated, for example, 'Spanish Night' with special music. At Christmas there were parties which reflected high food consumption.

There are 3 outside signs including a sandwich sign

that indicates 'Business Men's Lunch' and a wall sign with the menu and hours of operation. Inside the door there is a sign which promotes an 'all you can eat' special, and also an illuminated sign stating the 'Business Men's Lunch'. Disco appears in smaller letters. Two showcases have been erected with photographs of the dishes served, and their prices.

A majority of tables have table cloths, and tables are set for lunch and for dinner. The service staff consist of a full time chef (there being no less than 2 persons in the kitchen at one time), six waitresses, 1 doorman, and 1 hostess. There are adequate staff and facilities available for full dining service at all times.

Reservations are taken only in respect of dinner. Otherwise, a patron has to take a chance on availability of space. Food is advertised over the microphone.

Most of the food sales take place during the hours from 12 noon - 2 p.m. and 7-9 p.m. After 10 p.m. patrons stay (or attend) to drink and dance, and to eat lightly. It is noteworthy that patrons stay on after 10 p.m. and 1 a.m. to 4 a.m. even though liquor is no longer available.

Management stated that they were doing all possible to attract customers to dine, and to stimulate the consumption of food. There was little profit on the luncheon service, as competitive prices had to be kept as well as good food. Management maintained that higher prices for more dollar sales would be self-defeating, for there would be fewer customers. They further stated that the liquor sales after 10 p.m. were necessary to have a viable total business, and that if a 10 p.m. closing were imposed it would lead to bankruptcy of the establishment in which there was invested some \$130,000, for regular clientele who generally patronized the establishment would likely turn elsewhere.

Under Section 40 of the Liquor Licence Act, 1975 the Lieutenant Governor in Council may make regulations "prescribing classes of licence....and the terms and conditions to which each class is subject". There have been created in the Regulations a variety of licences and terms and conditions applicable thereto. A Lounge Licence requires no balance of receipts. An Entertainment Lounge Licence requires at least 30% of total receipts to be from the sale of food. A Dining Lounge Licence requires at least 50% of the total receipts to be from the sale of food.

The language of Regulation Section 6, subsection (5)(a) is clear and unequivocal.

The Liquor Licence Act enables the Board to bring about compliance with such regulations through several means.

The Act provides:

10-(1) The Board may at any time review a licence or permit on its own initiative and attach such further terms and conditions as, it considers proper to give effect to the purposes of this Act.

It was argued on behalf of the licensee that the term and condition imposed was not such as gave effect to the purposes of the Liquor Licence Act.

Amongst the purposes of the Act is that of regulating the service, supply, and thereby the consumption of liquor. By the regulations the Lieutenant Governor in Council has set out regulatory measures. Section 6 subsection (5)(a) is one of those regulatory measures.

It was argued on behalf of the licensee that the Board had a discretion as to action in the event of non-compliance; that it did not have to do anything about the matter, and that more time, (even a year) should be given to the Licensee to comply.

The Tribunal is of the opinion that whether or not Section 10 is an empowering section only and is not to be interpreted as giving the Board discretion as ordinarily defined, the Board does have a 'discretion' as to the nature of the terms and conditions to be attached. And since the mechanics of bringing about compliance are not rigidly spelled out in the regulations, the Board also has 'discretion' in the procedures.

There is however, nothing in the Act or regulation which prescribes the exercise of a discretion. The Liquor Licence Board has power to attach the term and condition that it did.

The Liquor Licence Act is a regulatory act and it is incumbent upon those charged with its administration to see that the regulations set down are complied with. Any breach must be dealt with. It is clearly demonstrated and admitted that the licensee has been regularly, and is, in breach of Regulation Section 6(5)(a). The situation cannot be ignored.

There appears to be some doubt abroad as to the right of management of a dining lounge to refuse to supply liquor when ordered without food on the grounds that an imbalance would be created. Licensees believing they have done all they can to stimulate food sales have stated in excusing their not achieving a balance that they "cannot force a person to eat." The Tribunal is of the opinion that such a right exists. A balance can be achieved by reducing liquor sales to equalize food sales. Since the regulations require this balance, the right of refusal must be implied to enable licensees to bring

it about. It may be difficult to explain to a patron, but the explanation is there to be given.

The Act sets out the powers of the Tribunal:

Section 15

(3)....may by order confirm, alter, or revoke the decision of the Board or direct the Board to take such action as the Tribunal considers the Board ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Board.

(4) The Tribunal may attach terms and conditions to its order or to the licence or permit as it considers proper to give effect to the purposes of this Act.

The Tribunal has held that the hearing requested of it may encompass all evidence to the date of the hearing. Accordingly, the Tribunal has before it evidence which was not before the Board and can make its decision based thereon.

The Tribunal finds that the licensee has taken significant steps to increase food sales since the Board Hearing and these are reflected in the percentage of receipts therefrom.

In all probability if the supply of liquor ceased at 10 p.m. during the week, few patrons would stay beyond that time. It is highly probable that the attractiveness of its facility would also lessen greatly and fewer patrons would attend before 10 p.m. The establishment would be affected materially.

The Licensee has initiated an operation which offers a special attraction. The Licensee must however, create the total special type of establishment it wishes to operate for its own profit and enjoyment of its patrons within the context and requirement of all the regulations. That it is operating a good establishment and complies in all respects except one, is not sufficient.

The Tribunal is of the opinion that whether or not reasonable time for compliance is required to be given the Licensee, reasonable time has already been made available to the Licensee. If the Licensee had proceeded from the date of opening as it does presently, the breach of the term and condition of Section 6(5)(a) may have been remedied heretofore.

The Licensee has made substantial changes in its operation, and continuing compliance with the relevant section appears at hand. The Tribunal will enable the Licensee to demonstrate compliance with the regulations.

The Tribunal hereby alters the decision of the Board to postpone the commencement date of the term and condition and make it subject to a proviso that will enable the Licensee to prevent it becoming effective.

The Liquor Licence Appeal Tribunal orders that the decision of the Liquor Licence Board in respect of the said licence be altered to read:

"Commencing Monday, the 14th day of August, 1978, there shall be attached to the said licence the term and condition that the sale of alcoholic beverages in the 'Dining Lounge' of Le Dome Restaurant shall CEASE at 10:00 p.m. daily until such time as the requirements of Section 6, Subsection (5)(a) of Regulation 1008/75 are met provided that if the total receipts from the sale of liquor and food during each of the months of May, June, and July, 1978 are in conformity with the said section, the said term and condition shall not become effective, and the Tribunal hereby directs the Licensee to file monthly reports in respect of the said receipts with the Board within 10 days of the end of each month."

TORONTO FIRE FIGHTERS' RECREATION CLUB, Markham

Club Licence - Dining Lounge
issued to
Toronto Fire Fighters' Recreation Club
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON and
BARBARA J. SHAND, MEMBERS

COUNSEL: DONALD G. MARTIN representing the Licensee
S. A. GRANNUM representing the Liquor Licence Board

DECISION: 8 June, 1978

Toronto Fire Fighters' Recreation Club is the Licensee (#040396) since 1967 of an establishment classified as a Club under the name of the Fire Fighters Club at 44 Esna Park Drive, Markham.

The licences issued to the licensee are as follows:

Club Licence-Dining Lounge, Serial #16322
in respect of 2 rooms located

1. Main Floor, Northeast Section
capacity 314
2. Main Floor, Centre Section
capacity 68
(known as the Spanish Room)

Club Licence-Lounge, Serial #16323
in respect of 4 rooms located

1. Main Floor, Northwest Section
capacity 115
2. Main Floor, West Centre Section
capacity 35
3. Main Floor, North Centre Section
capacity 165
4. Second floor, Centre Section
capacity 152.

Terms and conditions of the licences are set out in Ontario Regulation 1008/75 with the following particularly relevant provisions:

Section 22

(2)no liquor shall be sold in premises for which a club licence is issued except to a member of the club, a spouse of a member, or a registered guest of a member or such person as may be specified

in the by-laws or constitution of the club as having access to the privileges of the Club by reason of a reciprocal agreement with another club.

(3) The officers and directors of a club licensed under the Act shall ensure that,

- (a) a list of the names and addresses of all members of the club
- (b) a register for recording all guests and member sponsoring such guest admitted to the licensed premises of the club; and
- (c) a list of all dues paid or owing by members of the club

are maintained.

On the 22nd of February, 1978, the Liquor Licence Board issued a proposal to "SUSPEND" for a period of ten (10) days the liquor licence(s) held, for the following reasons:

- "1. The licence holder is a holder of a 'Club Licence - Dining Lounge' for premises located at 44 Esna Park Drive, Markham, Ontario
- 2. The licence holder, by its officers, agents, and employees, has sold and served liquor in the said licensed premises to persons who are neither members of the club nor spouses of a member or registered guests of a member contrary to Section 22, subsection (2) of Regulation 1008/75."

After a hearing on the 13th of April, 1978, the Board found

"that the licence holder served liquor in the said licensed premises to persons who are neither members of the Club nor spouses of a member nor registered guests of a member, contrary to Section 22, Subsection 2 of Regulation 1008/75 under the Liquor Licence Act, 1975"

and ordered

"that the Club Licence-Dining Lounge issued to the Toronto Fire Fighters' Recreation Club be SUSPENDED commencing at the opening hour on Monday, May 1st, 1978 and to continue in effect until the opening hour, Monday, May 8th, 1978."

The Toronto Fire Figthers' Recreation Club was incorporated by letters patent on the 22nd of June, 1964

conducting its social and fraternal activities under the name of the Fire Fighters Club.

The structure of the establishment is handsomely built and equipped with handball, raquet ball, tennis courts, games rooms, meeting rooms, swimming pool, picnic areas, on 10 acres of land.

On February 1st, 1978 just prior to noon, S. J. Napolitano, an investigator with the Liquor Licence Board, visited the establishment for the first time, alone. There was no staff member at the main entrance. After entry he proceeded to the Dining Lounge Room #2 (The Spanish Room). He had not been requested to sign a guest register and had not been challenged whether he was a member or guest, though he was to see a sign 'Members and Guests only'. A waitress was standing at the kitchen door and he asked if he could get something to eat and drink. Upon receiving a reply of 'yes' he advised that he was not a member. The waitress responded affirmatively and he ordered a beer and sandwich which was brought to him after 12 noon. He was there under an hour's time and paid cash at the door upon a check which had been given him. The waitress had treated him very courteously. He noted that there was a register outside the entrance to the Spanish Room. There were 5 other patrons in the room - a group of 3 and a group of 2, and 2 waitresses and a bartender. Construction was going on in the premises.

On February 10, 1978 at 12:01, K. R. Frith, an investigator with the Liquor Licence Board, visited the establishment for the first time, alone. After entry he proceeded to Dining Lounge Room #2 (The Spanish Room) and took a seat at a table. He was not challenged as to whether he was a guest or a member. He ordered and was served a beer and food. There were 37 patrons in the room. He received a check and paid cash on leaving at 1:10 p.m. At that time he noted a register just outside the room with a small sign on a pedestal about signing and that 8 members and 6 guests had signed. Construction was going on.

The testimony of Messrs. Napolitano and Frith was not contested. Neither of them were persons who in respect of the Fire Fighters Club came within the categories set out in Section 22(2).

Miss Delia Hayes, an inspector with the Board since October, 1977, attended upon the premises on the 18 November, 1977 at about 2:20 to undertake a semi annual general inspection. She entered the Dining Lounge Room #1 where there were some 200 patrons, ordered, and was served lunch, during which she was not questioned or challenged in any way. Prior to February, 1978, she had occasion to visit the establishment once or twice and found no matter related to the licensed operation

(including the provisions of Section 22) which required discussion with the management. She was of the opinion 'that it was a very well kept club'. She attended on the 5 April, 1978 and as she entered, an attendant at the desk some 10' from the front door turned a register toward her, which she signed. She was recognized as the inspector.

J. W. McCall, District Chief of the Toronto Fire Department, and President of the club since its inception in 1964, testified as to the operations of the Club. There were three classes of members - Senior Members (some 1400) are firefighters with paid up dues - Associate Members (300-400) who are friends and relatives of firefighters - Day Members who upon application could after consideration and a 2-day period, utilize facilities during the day time. The management have been keen on all firefighters becoming members. In all, there are up to 3,000 family members.

The President outlined entry and service procedures. The management endeavoured to have a member be with all guest(s) and the club had used up 12 registers in respect of entry. The register was to be at the front entrance at 12 noon and then moved at 2:30 to the entrance of the Spanish Room which in a way was the entry to all facilities of the Club. Some 6 firefighter members take turns at the entrance to check admissions. This action is a typical example of the participation of members and relatives in the active operation of the establishment on a part-time basis. He was of the opinion that because of the construction going on that such procedures were likely not carried out on February 1st and 10th, and that because of the size of the club, recognition of all persons who were members was difficult. He stated that refusals of entry had taken place.

The requirements of Section 22 are clear: "no liquor shall be sold" except to the categories of persons set out. If such a sale does take place the licensee is in breach of a term and condition of the licence. The duty cast upon the officers and directors is not limited to Section 22 subsection (3) and other pertinent sections. The licensee through its management must set up procedures as they see fit but in any event such as would be reasonably sufficient to prevent the breach of Section 22(2) being enabled.

In this instance 2 warnings in effect had been given. These should have prompted the management to take the most stringent measures to prevent a breach of Section 22(2).

The visits of the investigators of February 1st and 10th, 1978, demonstrate that the procedures likely generally carried on, and in any event, on those days, were not sufficient. Management had failed to discharge the obligation placed upon the licensee by the section.

The 2 incidents were not a question of someone having covertly entered the premises by some devious route or means, but in a straight forward manner through an entrance presumably generally used by members and guests. The investigators walked in off the street and without any difficulty obtained service of liquor; it would appear that any member of the public could have done the same, although there may be some doubt whether a member of the public would have had the composure or ability of a seasoned investigator to avail himself of the services of a private club in the manner that each did.

The Tribunal is of the opinion that the management did not wink at or encourage the entry of persons not in the categories set out in Section 22(2) nor was it careless to the degree that would be tantamount to the foregoing. The presence of the register and that it had signatures on February 10th is evidence of this. However, its procedures were not stringent enough in the light of the matter having been brought to management's attention twice.

The Tribunal finds that the Toronto Fire Fighters' Recreation Club was on the 1st and 10th days of February, 1978 in breach of the term and condition of the licence issued to it set out in Ontario Regulation 1008/75 Section 22 Subsection (2).

Mr. Martin, on behalf of the licensee, argued that the period of suspension was too severe, and drew attention to the fact that similar periods of suspension were imposed on commercial establishments even though the breaches could be considered more serious. The Tribunal is of the opinion that the comparison is not valid; a period of suspension can have a serious effect on commercial establishments in that patrons may be lost; it is not likely that members will be lost.

That the club is in all other respects an excellent operation or that no other breaches had occurred are not sufficient to excuse the 2 breaches detailed. The issuance of a club licence makes available to a club privileges for its members, but also imposes obligations of which Section 22(2) is one.

The Tribunal believes that those in charge of the affairs of the licensee are genuinely interested in operating the club as a 'private club' for the benefit and enjoyment of those qualifying for membership. The situation enabling the breach of Section 22(2) appears to have been remedied.

The Tribunal is of the opinion that no purpose would be served by a period of any severity; a suspension in itself will constitute a major penalty. No punitive penalty is warranted.

Accordingly, the Tribunal alters the decision of the Liquor Licence Board of April 13th, 1978 to be as follows: The Club Licence-Dining Lounge issued to the Toronto Fire Fighters' Recreation Club be suspended for a 2-day period, commencing at an opening hour and to continue to an opening hour 2 days later, and the Liquor Licence Appeal Tribunal directs the Liquor Licence Board to set the exact period thereof.

BARN STEAK HOUSE TAVERN

Dining Lounge Licence
issued to

Kostas (Gus) Sorkos and Mrs. Victoria Cowderoy
APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS*

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON and
JACK C. SIM, MEMBERS

COUNSEL: S.A. GRANNUM representing the Liquor Licence Board
AGENT: KOSTAS (GUS) SORKOS representing the Licensees

DECISION: 20 June, 1978

Kostas (Gus) Sorkos and Victoria Cowderoy are the licensees (Licence #091328) of the premises classed as a tavern under the name and style of Barn Steak House Tavern, 1310 Huron Street, London.

Since August, 1973 there has been issued a Dining Lounge Licence in respect of the following areas, at times detailed later:

1. Victoria Room - Main Floor, South Section
(capacity 58 persons)
2. English Room - Main Floor, North Section
(capacity 266 persons)
3. The Steak House - 2nd Floor, Northeast Section
(capacity 198 persons)
4. Banquet Room - 2nd Floor, Southwest Section
(capacity 171 persons).

The history of the operation of the establishment is as follows:

The original building was purchased in December, 1962 at the location at the outskirts of London. It consisted of a coffee shop which could accommodate 58 people and an unlicensed banquet room accommodating 80 persons. In 1965 a fire burned the establishment to the ground. It was immediately rebuilt with a new kitchen, small dining room, and two banquet rooms - one accommodating 80 persons and the other 65.

Mr. Sorkos concluded that expansion of the business was required. Customer demand indicated that there would be a ready market for a larger operation, a large tract of land was

available for expansion, and with large housing developments being built in the area, he believed the potential for future business to be tremendous. He wanted to "grow with the city" and was looking ahead 5 or 10 years.

On the 21 August, 1973 after renovation the Victoria Room (#1 - 58 persons) was licensed. Later in the same year construction of an addition of 14,000 square feet which had been started in 1971 was completed, housing the present English Room (#2 - 266 persons) and The Steak House (#3 - 198 persons); and on 8th November, 1973 these two areas were licensed. Mr. Sorkos upon the consideration of the application had intimated that the liquor and food ratio was 10 to 90 and it was along these lines that he could continue to operate.

This major addition was built to that size, not to meet a then demand, but in contemplation of the increased demand that Mr. Sorkos looked forward to. The operation became the biggest in London with a substantial plant and staff (39).

The licence is subject to the terms and conditions set out in Ontario Regulation 1008/75, and in particular the following sections: 6 (5)(a)

In each premises for which....dining lounge licence is issued

(a) the total receipts from the sale of liquor in any month shall not exceed the total receipts from the sale of food in the same month;

The licensees soon ran into continuing difficulty in meeting the requirements of this section.

On the 16th of December, 1976, the Liquor Licence Board issued a proposal

"to MAKE AN ORDER that the sale of spirits, beer, and wine shall cease at 10 p.m. in the dining lounges of the said establishment or, in the alternative, to attach other terms and conditions as the Board deems advisable".

for the following reason:

"commencing with the quarter-year period ending August, 1974, the gross receipts from the sale of liquor have in every month exceeded the receipts from the sale of food, contrary to Section 6 subsection (5) of Regulation 1008/75 under the Liquor Licence Act, 1975."

After a hearing requested, on the 15th of February, 1977, the Liquor Licence Board found

"that the licensees have, in fact, been in contravention of the said Section by not meeting the food/liquor ratio

requirements."

and ordered

"that the 'hours of sale' of alcoholic beverages in these licensed premises be restricted to the hours 12 noon to 11 p.m. commencing Monday, March 7th, 1977, for a period of three (3) months at the end of which time the food/liquor ratio will be reviewed by this Board."

The matter of imbalance of liquor and food receipts had been before the Board as follows:

On the 30th of October, 1975 Mr. Sorkos appeared before the Board when the Chairman recited figures indicating a dramatic change in the operation. Liquor sales vastly exceeded food sales. It appeared that the dining lounge was being utilized in the evening as a lounge with live entertainment costing up to \$4,000 per week. The Board advised Mr. Sorkos that the food and liquor imbalance would be reviewed in 3 months.

An Inspector's report of December 29th, 1975 indicated that any additional capacity would not resolve the food/liquor imbalance.

On March 1st, 1976 the problem was again brought to Mr. Sorkos' attention. On March 10th the Board proposed to refuse a request for additional dining lounge capacity and on March 12th, the Board proposed to attach terms and conditions in respect to the licence because of failure to comply with Section 6 subsection (5). After a hearing held on April 22nd the Board found that the licensees had been in contravention of the section. The Board approved of the licensing of a 4th room (capacity 171) on the 2nd floor for banquet use only, in the hope that food sales would improve. This approval was by way of a term and condition for a three-months' period at the end of which time the licence would be reviewed, and if at the end of that time (July 22nd) there was still an adverse liquor/food ratio it would be necessary for a further appearance before the Board for consideration of other terms and conditions.

On July 27th, Mr. Sorkos appeared before the Board for purposes of reviewing the directive of April 22nd. It was apparent at this meeting that the three-month proposal of April 22nd had not been a benefit to Mr. Sorkos, but Mr. Sorkos expressed the opinion that fall banquet bookings would improve the food percentage. As a result, the Board granted an extension to November, 1976. (Note: this extension has continued to date).

The balance was not achieved and the Board's proposal of 16 December, 1976 was issued.

Details before the Board at the hearing on 15 Feb. 1977 of the total receipts from the sale of liquor and of food included the following:

	<u>LIQUOR</u>	<u>FOOD</u>	<u>% LIQUOR</u>	<u>% FOOD</u>
1973				
Nov.	11,666	37,860	23	77
1974 Total	339,883	284,027	54	46
1975 Total	320,311	199,789	61	39
1976 Total	325,601	212,087	60	40

Recent monthly total receipts before the Board at the hearing were as follows:

1977				
Jan.	26,520	12,441	68	32

Additional figures filed at the Tribunal hearing on April 7, 1977 were as follows:

Feb.	28,255	13,532	68	32
Mar.	34,626	17,928	68	32

The operation of the various areas at the time of the Tribunal hearing April 7, 1977 was as follows:

Victoria Room - originally open 12 noon to 1 a.m.
Tues. to Sat.,
closed Sunday and Monday

It is a meeting place catering to the after-work crowd. Luncheon specials are also an integral part of the operation. When the Steak House opened, this room was closed as a dining room and made available for service club meetings and private parties. In 1976 it was re-opened as a dining room. In 1978 hours are 4 p.m. to 12 p.m. weekdays, 4 p.m. to 1 a.m. Friday and Saturday.

English Room - open 12 noon to 1 a.m.
Tues. to Sat.
closed Sunday and Monday.

From 12 noon to 2:30 p.m. a luncheon and sandwich buffet caters to a cross-section of people (businessmen, blue collar workers, teachers, office staff). The price for this buffet has been maintained at the bargain rate of \$1.50 per person to encourage food consumption. No full dinners are served. After 9:30 the English Room features live entertainment and dancing, with food available. Young patrons come not to eat, but for the entertainment, and consequently, an imbalance is created as they principally consumer alcoholic beverages.

Steak House - open 12 noon to 2 p.m. and
4 p.m. to 9 p.m. Tues. to Sunday
closed Mondays.

This dining room was planned to cater to a clientele with a higher income level, and featuring French cuisine, flambés, etc. This approach was tried for one year but customer support was insufficient. It failed to attract the executive type clientele anticipated, nor was there a wider response from London patrons generally. The dining room was therefore converted to Smorgasbord presentation at a cost of approximately \$15,000 for serving units in an effort to improve its food percentages. An extensive buffet including 4 hot dishes, and desserts, was described as marvellous. The luncheon crowd is excellent and consists mainly of businessmen from the area. Weekends are good with mostly family and couple participation.

Banquet Rooms - open as required.

Management was of the opinion that this area had good potential, especially in certain months of the year in that much interest is shown in the facilities for wedding receptions, bowling parties, and staff parties.

In summary, the operation consists of 4 aspects. Firstly, the lunch time trade, secondly, the dinner hour trade, thirdly the special occasions, and fourthly, the 9:30 to 1 a.m. patrons in the English Room. The food receipts of the four aspects do not balance the liquor receipts; more food is sold in the first three aspects but far more liquor is sold in the fourth aspect.

The inspector's assessment was that the licensees had tried hard to improve the food sales. He was of the opinion that they have tried everything, that they have a good kitchen, that food is good, that the general operation was very very good, that they have advertised the food to their clientele. He himself could make no further suggestion how a greater consumption of food could be attracted, and couldn't think of anything else management could do unless it tried to force people to eat which he admitted can't be done. He assessed the total operation as being a fully equipped dining operation and not a lounge operation under the guise of the former - it was a very good establishment with a good food service.

Mr. Sorkos stated that he had done all he could to meet the required ratio, that money had been expended to this end, and that new approaches have been established in food service, and cost of entertainment had been reduced and that suggestions had been sought from the Board itself.

Mr. Sorkos was of the opinion that the extra hours that the Board wanted to eliminate were necessary to generate enough funds to meet the financial obligations of the business, that the restriction could put him out of business and

that more time was necessary to find solutions to the problem and that is why he has resisted restriction.

It would appear that the operation has been expanded in size and kind as to food beyond the support available from the community. The imbalance in receipts from liquor as to food has been compounded by the change in economic conditions so that the patrons are no longer partaking of the expensive meals which were made available at the time of commencement of the expanded operations. The general reasonable prices deemed necessary to attract customers are also a factor in the amount of receipts from the sale of food.

Upon a resumption of the hearing on the 6th of June, 1978, figures were filed with the Tribunal:

	<u>LIQUOR</u>	<u>FOOD</u>	<u>% LIQUOR</u>	<u>% FOOD</u>
1977				
Total	423,634	232,486	64	36
Jan. 1978	37,945	11,731	76	24
Feb. 1978	43,258	14,770	75	25
Mar. 1978	49,458	16,070	76	24
Apr. 1978	41,669	18,614	69	31
May 1978	38,353	19,655	66	34

The situation at the Barn Steak House changed little in the interval. No significant adjustments were made. An examination of the figures shows that the receipts from the sale of food had not only not increased in percentage, they had in comparable calendar months decreased - for example, comparable figures for the month of April are:

1976	28,331	17,490	62	38
1977	33,243	17,691	65	35
1978	41,669	18,614	69	31

It is to be noted that the dollar amount of liquor sold increased substantially, whereas the dollar amount of food sold remained relatively the same. This is highlighted in some of the other months, for example, for the month of December:

1976	38,439	26,699	59	41
1977	53,654	26,026	67	33

Twelve month totals may be compared as follows:

1976	325,601	212,087	60	40
1977	423,634	232,486	64	36

Management had neither increased its receipts from food sales on a percentage basis nor had it decreased its receipts from liquor sales to bring about the 50/50 balance required.

Mr. Sorkos reiterated that he was a "food man", that he could not force eating of food on his clientele who preferred to drink rather than to eat, as demonstrated by the fact that patrons would come in the most inclement weather to drink but would not do so to eat. He was willing to try anything to achieve a balance and welcomed suggestions. The excellence of the food available in the Steak Room at reasonable prices did not attract sufficient patrons to achieve a balance. The predominance of liquor sales in the Victoria Room (sandwiches available) and the English Room (sandwiches, hot and cold buffet dishes available) brought about the imbalance. Mr. Sorkos acknowledged as the inspector had indicated, that the English Room, though not intended as such, for food is available, was akin to a lounge operation, particularly after 9:30 p.m. when local rock & roll bands provided entertainment. Indeed, the situation there is such that it is not likely that the percentage of 30% food required in an entertainment lounge could be met.

There is no doubt that the establishment has excellent food menu and physical plant for food service. In all respects except the food balance, it is operated well and is performing a dining service to the public, and is making available a variety in such service that attracts a cross section of people.

However, the regulation is clear - in a premises licensed as a dining lounge, the 50/50 balance is a term and condition of the licence, and management must develop an operation to comply.

Mr. Sorkos reiterated that the complete operation as carried on was necessary to have a total viable business, and to meet liabilities. He had suffered a loss in 1976 but had a good year in 1977. A statement of liabilities included the sum of \$315,000 for the purchase in December, 1977, of land - an obligation entered into by Mr. Sorkos when he was aware that a restriction could well be placed on his operation which might have, as he himself explained, a negative effect.

The Tribunal finds that the licensee is and has been for some years in breach of the term and condition of the licence set out in Ontario Regulation 1008/75 Section 6 subsection (5) Paragraph (a).

The Tribunal is of the opinion that whether or not reasonable time should be allowed any licensee to achieve the

balance required, this licence holder has had more than ample time to demonstrate compliance and has failed to do so.

Accordingly, the Liquor Licence Appeal Tribunal confirms the finding of the Liquor Licence Board and hereby attaches a term and condition that the sale and service of liquor in the premises coming within the Dining Lounge Licence shall cease at 11:00 p.m. daily in order to reduce the sale of liquor by removing from the period of operation that time during which time the sale of liquor has been significantly predominant. The Tribunal is of the further opinion that the matter be reviewable by the Board if circumstances warrant a change in one direction or other.*

*NOTE: The above decision was appealed to the Supreme Court of Ontario (Divisional Court).
The appeal had not been concluded at the time of this publication.

DINKEL'S TAVERN - Toronto

Dining Lounge Licence
issued to Paul Dinkel
APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: R. G. DOUMANI representing the Licensee
S. A. GRANNUM representing the Liquor Licence Board

DECISION: 13 July, 1978

Paul Dinkel is the licensee (#091157) of the premises classified as a tavern under the name and style of Dinkel's Tavern, 88-90 Yorkville Avenue, Toronto.

The licences issued to the licensee in 1976 are:

Dining Lounge Licence (Serial #0964)
in respect of 2 rooms located:
1. sub-basement southwest section, and
2. sub-basement east section

Patio Licence (Serial #16648)
in respect of
northeast section outdoor area.

The total capacity is 191.

Terms and conditions of the licence are set out in Ontario Regulation 1008/75 including the following relevant provisions:

6(2)....liquor may be sold and served in an establishment licensed as adining lounge(or in an outdoor area adjoininga dining lounge....for which a patio licence is issued)... on Sunday...

(a) liquor shall only be served to a person having a meal while seated at a table;

6(5) In each premises for which a dining room or dining lounge licence is issued,

(a) the total receipts from the sale of liquor in any month shall not exceed the total receipts from the sale of food in the same month; and

7(1) Where entertainment is provided to patrons of premises for which a dining lounge ... licence is issued, the holder of the licence may charge a fee for entry to the licensed premises to cover the costs of entertainment provided that there are other facilities in the establishment where patrons may be served a meal at regular meal hours and where no entry fee is charged.

On 1st April, 1977, the Liquor Licence Board issued a proposal to

- (a) suspend for a period of ten (10) days the liquor licences held
- (b) prohibit the sale and service of liquor on Sundays until further ordered by the Board
- (c) attach a term and condition to the liquor licence that the sale and service of liquor shall cease at 10 p.m. each evening until further ordered by the Board

for the following reasons:

"The licence holder has carried on activities that are contrary to the regulations under the Liquor Licence Act, 1975 and specifically Section 7 thereof which authorizes an entry fee only where entertainment is provided and there are other facilities on the premises to which no entry fee is charged" in that "on Sunday, March 27th, 1977 between the hours of 9:05 p.m. and closing time, the licence holder charged an entry fee of \$3 for entrance to the licensed premises

"On Sunday, March 27th, 1977, the licence holder did, by his employees, serve liquor to patrons notwithstanding that the patrons were not having a meal at the time of service of the liquor

"The licence holder is also in breach of Section 6(2) of the regulations" in that "the total receipts from the sale of liquor in each of the months, July, 1976 until December, 1976 have exceeded the total receipts from the sale of food."

On 10 May, 1977, the Liquor Licence Board found

"that the Licensee has carried on activities that

are contrary to Section 7 of the Regulations under the aforesaid Act in that he did charge an entry fee of Three (\$3) Dollars for entrance to the licensed premises; further, the Licensee has provided 'Sunday' service and sale of liquor in these licensed premises in a manner contrary to Section 6(2) of the said Regulations and, finally, since July of 1976, there has been a contravention of Section 6(5) of the said Regulations in that the total receipts of liquor have vastly exceeded the total receipts of food.

and ordered

- "(1) The 'Dining Lounge' Licence granted to Paul Dinkel in respect of Dinkel's Tavern shall be SUSPENDED for a period beginning at the hour of 12:00 noon on Thursday, May 26th, 1977, and to continue in effect until the opening hour on Monday, June 6th, 1977
- "(2) Upon completion of the aforesaid "SUSPENSION" the 'Sunday' service of liquor shall cease until further ordered; and
- "(3) Upon completion of the aforesaid "SUSPENSION" terms and conditions will be attached whereby the sale and service of liquor shall cease daily at 10:00 p.m. for a period of six months, at which time the matter of food and liquor sales will be reviewed in relation to conformity with Section 6(5) of the Regulations."

Dinkel's Tavern started as an unlicensed restaurant and some seven years ago, occupying a sub-basement consisting of 2 rooms together with a patio area which was suitable for seasonal use only.

The establishment was operated from August, 1971 as a licensed restaurant (with the licences referred to earlier) with entertainment under the name of "Don Juans" till June, 1976. Extensive renovations were made during the period February to June, 1976 at a cost of \$151,000 (with \$80,000 still owing) and the establishment re-opened as Dinkel's Tavern.

The two indoor rooms were melded into one. The patio became part of the enclosed area suitable for year-round use. Admittance thereto is through the main door of the establishment. Dining and entertainment is offered in the one room created, and dining only in the "patio" area. Mr. Dinkel is a chef by profession and is a restaurateur of considerable experience and has been employed in many licensed outlets, including 2 of some rank.

There had been no problems in the operation of this establishment for the period of 5 years preceding the issuance of the Notice of Proposal. The imbalance was not the object of comment or action by the inspector or anyone on behalf of the Board prior to the issuance of the Proposal.

Details of the Quarterly Returns for the year 1976 were filed at the end of that period when the inspector was re-assigned and they came to the attention of the Board.

On the evening of the 27th of March, 1977 shortly after 9 p.m. Mr. McAllister, an inspector with the Liquor Licence Board of Ontario, attended the establishment as a result of a complaint in respect of a cover charge being charged. There was a sign indicating a \$2 cover charge during the week and a \$3 cover charge on Sunday: there was no section that a patron could enter to dine without having to pay the charge. Mr. McAllister paid the charge to Mr. Dinkel. After entering, he noted that customers were served liquor though they were not having food, i.e. not while having a meal.

Receipts from the sale of liquor and receipts from the sale of food placed before the Board hearing included:

Quarterly Return

1974		<u>Liquor</u>	<u>Food</u>	<u>% Liquor</u>	<u>% food</u>
Jan Feb Mar	\$	13,834	16,436	46	54
1975					
Jan Feb Mar		17,539	20,026	47	53
1976					
Jan Feb Mar		21,650	28,115	43	57
Apr May June		32,465	39,990	45	55
Jul Aug Sept		77,829	19,672	80	20
Oct Nov Dec		107,770	23,695	82	18
1977					
Jan Feb Mar		105,137	24,404	81	19

Monthly Return
for above quarter

Jan	34,044	9,270	79	21
Feb	34,338	7,963	81	19
Mar	36,753	7,870	83	17

At the Board hearing, on behalf of the licensee it was put forth that in respect of the imbalance he really was

not cognizant of 'what was happening'; that he now fully appreciated the gravity of the situation; that he was in the process of attracting a luncheon trade and was implementing a revised menu. A request was made for a period of probation to conform. The Board issued its order.

On May 27th the licensee, by his solicitors, advised the Board of a change in the hours of operation of the establishment such that the hours would be, with the exception of Sunday, from 7 p.m. to 1 a.m. The luncheon trial had not worked out and the later opening avoided the problems of the cocktail hour crowd. The Board was also advised that Sunday liquor services had ceased but that the premises were to remain open from 7 p.m. to 2 a.m. on that day for the sale and consumption of non-alcoholic beverages and food. The practice of imposing an entry fee was discontinued.

Prior to the Tribunal hearing the licensee made the following changes in the operation:

- a new menu instituted and food prices increased
- a menu placed on every table
- the following minimum food provisions imposed:
 - (a) a minimum food order Monday to Saturday of 75¢ for each alcoholic beverage ordered applicable to any dinner item on the menu including four items each priced at 75¢ added to the menu
 - (b) a minimum food order of \$2.50 on Friday, Saturday, and holidays.

(The Tribunal notes that this had the concurrence of the Board).

- liquor prices decreased
 - (The Tribunal notes that the earlier "scotch & soda" had cost \$2.10. Now the charge was a "scotch & soda" for \$1.35, and peanuts for 75¢).
- the sign on the sidewalk in front of the establishment has been removed
- the description of "night club" on the awning above the establishment has been replaced by "Restaurant".
- a copy of the menu has been displayed on the outside of the establishment, and
- the staff has been instructed to emphasize the food aspect of the operation.

Receipts from the sale of liquor and receipts from the sale of food detailed for the Tribunal Hearing on 21 July, 1977 were:

<u>Monthly Return</u>	<u>Liquor</u>	<u>Food</u>	<u>% Liquor</u>	<u>% food</u>
April	33,658	9,690	78	22
May	27,570	10,264	73	27
June	21,960	10,982	67	33
<u>Weekly Return</u>				
July 2	5,652	3,779	60	40
" 9	4,781	3,305	59	41
" 17	3,997	4,961	45	55
3 above weeks	14,432	12,047	55	45

It is clear that upon the renovation and the reopening of the premises as Dinkel's, the operation had changed drastically from a dining operation to an operation of entertainment (food, liquor, and music) where the dollar value of liquor sold increased drastically in amount and proportion to the value of food sold. Whether deliberate or not, the various changes in the operation were such as to bring this about. Printed material indicated the approach. The wine list had (with a logo) words, "Restaurant, Discoteque". A proposed dinner menu had the words, "Restaurant, Bar, Discoteque".

To a man in business the increase in revenue would be pleasing; but to the licensee, as one who had been in a licensed dining operation for some time, the imbalance should have brought about greater immediate concern and some remedial action. Neither would appear to have occurred until after the Board action. The licence holder maintains that the action or more correctly, the inaction of the regular inspector lulled him into believing that nothing was out of order.

It is clear that the imbalance was caused by the sale and service of liquor that took place after the ordinary dinner hour to patrons who attended the premises generally at that time, not with intent of dining, but for entertainment. It is also clear that the actions taken by the licensee after the Board hearing had the effect of reducing the imbalance significantly. The weekly figures for the month of July where the average receipts from the sale of food for 3 weeks were 45% and for the last week 55%, are significant and indicative.

Receipts from the sale of liquor and receipts from the sale of food detailed upon the resumption of the Tribunal hearing on 28 June, 1978 were:

Week ending	<u>Liquor</u>	<u>Food</u>	<u>% Liquor</u>	<u>% Food</u>
July 23	4,125	4,230	49	51
" 30	4,274	4,609	48	52

Monthly Return
(Board figures)

1977

July	\$	19,653	19,434	50	50
Aug.		19,546	19,403	50	50
Sept.		19,564	17,701	53	47
Oct.		16,344	15,301	52	48
Nov.		18,791	16,551	53	47
Dec.		22,131	20,161	52	48

1978

Jan.		15,334	15,068	50	50
Feb.		15,438	15,174	50	50
Mar.		18,858	18,729	50	50
Apr.		18,318	18,017	50	50
May		20,999	20,432	50.7	49.3

The Tribunal notes from all the figures filed that the dollar value of liquor receipts has gone down about a half from \$105,137 in the first quarter of 1977 (when the matter had been brought to the attention of the Board) to \$49,630 in the first quarter of 1978, and the dollar value of food receipts had gone up about a half from \$25,103 in the first quarter to \$48,971 - a significant swing.

The monthly receipts from the sale of food have continued as before the Tribunal earlier, and generally just a little less than the monthly receipts from the sale of liquor - lately, less than one percentage point, insignificant in comparison with the difference of a year ago.

Mr. Arthur Bell, an inspector with the Liquor Licence Board, testified that the establishment was very well run and that there was no cause for complaint except for the food imbalance. In that regard he had noted that the staff were promoting the sale of food.

The licensee testified as to changes since the earlier hearing. There was placed a sandwich sign on the sidewalk stating "Dinkel's Dining Lounge". In the operations, staff were instructed to, and in fact did, promote the

consumption of food. Food services continued until 12:30 a.m. with the chef on duty till that hour and now an after-theatre crowd came in to dine as well as to drink and dance. This was significant in that other establishments in that area stopped food service at 10:30 p.m. The prices of servings of wine were to be increased. Price increases were also to be made for food, namely,

- (1) an increase in minimum food order
Monday to Saturday from 75¢ to \$1.00
- (2) an increase in all 75¢ items on the menu
to \$1.00
- (3) an increase in all other items on the menu
by approximately ten percent.

He was confident that these changes would be adequate for continued full compliance with the regulations. Mr. Dinkel stated that closing earlier would remove the late dining clientele from him.

The Tribunal has taken notice in this matter that the Hon. L. Grossman, Minister of Consumer & Commercial Relations, had stated in the Legislature of Ontario on 25 May, 1978, as recorded in Hansard on Page 2770:

"we intend to drop the requirement of a sit-down meal with a Sunday drink. The food-liquor ratio provides sufficient control over consumption so we intend to enforce this restriction instead."

In the light of the foregoing, and upon the consent of all parties, the Tribunal has determined that the decision of the Liquor Licence Board dated 10 May, 1977 should be altered by revoking paragraphs numbered 1, 2, and 3 thereof and substituting the following therefor:

- (1) There shall be attached to the said licence the term and condition that the sale of liquor on the licensed premises on Sunday shall be prohibited until such time as the Act or Regulations pertaining to Sunday sales shall have been changed or until such time as the licensee shall have applied to the Liquor Licence Board for specific permission to resume the sale of liquor on Sunday. If at that time the licensee establishes that Section 6(5) of the Regulations has been complied with in all other respects and that the Sunday sale of Liquor would not likely lead to further breaches of the Act or Regulations then permission for the Sunday sale of liquor should be granted.

- (2) The licensee is given to 31st December, 1978 to demonstrate compliance with Section 6(5) of the Regulations and that the Liquor Licence Board should review the licence after the 31st day of December, 1978 to determine whether there ought to be terms or conditions attached to the licence which will be to assist the licensee in achieving the desired results.

DIPLOMAT TAVERN #2, Downsvievw

Dining Lounge Licence
issued to
Mantinia Holdings Limited
APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: JEFFREY EASON representing the licensee
S. A. GRANNUM representing the Liquor Licence Board

DECISION: 9 August, 1978

The Tribunal takes notice of its decision of 18 January, 1977 reported 1 L.L.A.T. Page 31 which sets out the operation of the licensed premises to that time.* That decision concerned an order of the Liquor Licence Board on the 16 September, 1976

"that the sale and service of alcoholic beverages in these licensed premises SHALL CEASE at 10:00 p.m. daily effective at the closing hour October 2nd, 1976 and to remain in effect until March 21st, 1977, at which time this Order will be reviewed by the Board."

The Liquor Licence Appeal Tribunal upon appeal revoked the order and directed the Board to review the licence after the 15th day of October, 1977 to determine whether there should be attached at that time a further term and condition as the Board considers proper.

The present licensee is Mantinia Holdings Limited of which the shareholders are Messrs Demetre (Jim) Procopos, Stephane (Steve) Galiotos, and Demetre (Jim) Sotiropoulis, the former licensees.

On the 4th of May, 1978, the Board issued a Notice of Proposal to

"attach to the Dining Lounge Licence(s)...a TERM and CONDITION that the sale and service of liquor in the establishment shall cease at 10:00 p.m.

* Note - 2 typographical errors appear in the decision as printed:

- on Page 31, Line 19 "1955" should read "1975"
- on Page 33, Line 29, "unaware" should read "aware".

for the following reasons:

"The Licensee is carrying on activities that are in contravention of Section 6 subsection (5) of the Regulation 1008/75 under the Liquor Licence Act, 1975 and in particular, the total receipts from the sale of liquor in the dining lounge have exceeded the total receipts from the sale of food in each month during the period commencing September 15th, 1975 and ending March 31st, 1978."

At the hearing of the Board on 13 June, 1978 to deal with the proposal the following figures were before it:

	<u>Liquor</u>	<u>Food</u>	<u>% Liquor</u>	<u>% Food</u>
1975				
Oct Nov Dec	55,515	25,033	69	31
1976				
Jan Feb Mar	55,003	23,003	71	29
Apr May June	59,197	24,842	70	30
(The above figures had been before the Board at its earlier hearing)				
Jul Aug Sept	57,272	27,489	68	32
(the above figures had been before the Tribunal at the earlier appeal)				
Oct Nov Dec	55,782	31,534	64	36
1977				
Jan.	15,021	9,956	60	40
Feb.	15,974	10,886	59	41
Mar.	20,125	13,222	60	40
Apr.	18,719	12,080	61	39
May	17,088	12,231	58	42
June	17,445	12,793	58	42
July	14,784	10,419	59	41
Aug.	14,486	11,246	56	44
Sept.	17,312	11,562	60	40
Oct.	17,075	11,016	60	40
Nov.	18,024	12,888	58	42
Dec.	16,621	11,882	59	41
1978				
Jan.	16,084	11,886	58	42
Feb.	15,780	11,242	58	42
Mar.	16,610	13,035	56	44
Apr.	17,367	14,630	54	46
May	18,395	15,952	53	47

After the hearing, the Board attached to the licence the term and condition

"commencing TUESDAY, JULY 4TH, 1978....the sale of alcoholic beverages in the 'Dining Lounge' of the Diplomat Tavern shall CEASE at 11:00 p.m. Monday through Saturday inclusive, until such time as the requirements of the Regulations are satisfied".

The Board expressed an intention to review the operation from the standpoint of the food and liquor sales at the end of September, 1978,

At the Tribunal appeal there were filed the most recent figures

	<u>Liquor</u>	<u>Food</u>	<u>% Liquor</u>	<u>% Food</u>
June	18,521	16,375	53	47

Mr. A. B. McAllister, an investigator with the Liquor Licence Board, attended the premises to monitor the sales and the following figures were obtained:

(taken from the ledger for the days noted)

Mon. June 5	450.19	377.30	54	46
Tue. June 6	652.37	465.90	58	42
Wed. June 7	614.43	488.20	55	45

(Taken periodically during the day from the cash registers)

Thur. June 8	11,170.34	711.45	62	38
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NOTE: The liquor sales for Thursday reflect the attendance at the premises of striking cement truck drivers who stayed there most of the day 'celebrating' the commencement of their strike.

Fri. June 9				
12-1:45 p.m.				
Main	100.25	124.25	44	56
2nd Floor	100.15	221.75	31	69
Total	200.40	346.00	36	64
1:45-7 p.m.				
Main	132.10	114.90	53	47
2nd Floor	202.95	65.30	75	25
Total	335.05	180.20	65	35
7-10 p.m.				
Main	103.15	58.60	63	37
2nd Floor	107.00	38.70	73	27
Total	210.15	97.30	68	32
10 p.m. - 1 a.m.				
Main	164.50	118.20	59	41
2nd Floor	134.00	18.75	87	13
Total	298.50	136.95	69	31
Day Total	1,044.20	760.45	59	41

NOTE: The periodic figures for liquor include sales tax and mix and accordingly the actual receipts from the sale of liquor would be slightly less. However, the adjustment of the ratio to food would not be significant.

It was again not disputed that the licensee has continuously been and is in breach of the term and condition set out in Section 6(5)(a), and the Tribunal so finds. It was argued on behalf of the licensee that the continuing and total operation of the restaurant should be evaluated. The plea was that since progress had been made towards achieving a balance, the term and condition restricting the sale of liquor should not be attached at this time because of the likelihood of the business being irreparably harmed.

The general operation of the restaurant continues to be without criticism except for the liquor food ratio. It is well run in a businesslike manner, clean, and well serviced with staff and good equipment. There are no known adverse police or other reports on file. In addition to the three named shareholders who take an active role (one as cook, the others as barmen) there are 3 full-time chefs, 5 full-time waitresses, 1 part-time waitress and a part-time doorman. The main cooking is done in the basement, with 2 kitchens on the main floor. There are freezers well stocked with meat and fish. The monthly food purchase is considerable. The food offered is substantial for the price asked. The general menu is extremely good, with quality meats and all items in good portions at most reasonable, indeed inexpensive, prices. Good 2-course specials, varying from day to day, are offered. Steak specials for 2 are most attractive in price.

The monitoring of the food and liquor service demonstrates that the receipts from food sold are substantial during the lunch period. About 98% of the customers partake of food at lunch time and through the day about 75% eat. The lunch is varied and includes a considerable number of steaks. The kitchen remains open to 1:00 a.m. with a chef continually on duty and all foods are available. The investigator observed on his Thursday visit that at 1 a.m. four businessmen entered and ordered steak dinners which were served, the service continuing until shortly before 2 a.m. The total operation is that of a genuine restaurant. The operation in the opening hours is that of a busy dining lounge; in the later hours the operation assumes the appearance of a lounge in which food is served in an appreciable though unbalanced amount. Thursday evening, for example, 31% of the receipts were for food. The change in operation is not because of the intent or desire of the management but because of the personal habits and requirements of the clientele.

The operation of the restaurant is subject to several significant factors.

1. Customers are mainly working class and not too affluent. An increase in food prices would likely affect volume of business. A minimum food purchase policy, or a food ticket procedure, or a refusal to serve liquor unless food is ordered, could alienate clientele.
2. Parking is a problem in that the tavern is in a small business shopping complex and the parking area is shared. The district from which patrons can be drawn is limited.
3. The establishment is surrounded by other restaurants, four of the seven businesses are food places. There is another restaurant which is two doors away; a 'submarine' fast food restaurant and a 'McDonald's' are close by. The competition for inexpensive eating is great. A further effect of this can be illustrated by the fact that patrons, having eaten inexpensively and lightly at a fast food outlet (e.g. a hamburger at McDonald's) come to the Diplomat for a beer.
4. There are 15 restaurants in a mile radius. Those in the Yorkdale Shopping Centre, in the Holiday Inn, and in the Triumph Hotel attract a more affluent clientele and family dining.
5. On the whole there is no profit in the food aspect of the operation.
6. The sandwiches and lesser plates offered are so reasonably priced that with 2 drinks the balance is affected.
7. The restriction of 11 p.m. would mean that few customers would attend the premises after 11 p.m. and even after 9:30 p.m. The accompanying reduction in income would have a drastic effect on the total business. An examination of the figures obtained from monitoring shows the significance of the income during this period.

The Tribunal finds that the licensee has been and is exerting continuing and very determined efforts to bring about a balance. Indeed, the efforts appear to be exceptional in comparison with other places. The quality and price of the food are attractive. There is an effort to promote consumption by the use of substantial signing and menu postings outside, by the use of menu place settings, cards for specials, and the like. The surroundings have been redecorated. The whole operation is without fault.

In spite of difficult circumstances, the efforts have borne fruit. For the quarter of April, May, June of 1976 preceding the original Board order of 16 September, liquor and food receipts were \$59,197 and \$24,842 respectively - a percentage of 70 to 30. For the same quarter of 1977, a year later, receipts from liquor and food were \$53,752 and \$37,104

respectively, a percentage ratio of 59 to 41. For the same quarter of 1978, a further year later, when the Tribunal is considering the matter again, the receipts from liquor and food were \$53,929 and \$46,957 respectively, a percentage ratio of 53 to 47. The dollar value of food has almost doubled, whereas the value of liquor has decreased. The food figure is even more significant in the light of the fact that the prices to the patrons have remained the same throughout the period, for management absorbed higher food costs by assuming a greater portion of overhead costs personally e.g. by working 14 or more hours daily.

The Tribunal is taking cognizance of the fact that the licensee is not emphasizing (i.e. pushing) liquor sales, is exerting a bona fide effort in promoting the consumption of food and is having considerable success toward the goal of achieving compliance with the section in question. In the light of the 42% average for the 5 days in June noted, it must be assumed that there were days in June on which a balance was in fact attained to achieve an overall average of 47%. The Tribunal is also of the opinion that these licensed premises are rendering a service to the community to which they relate.

Mr. Grannum has submitted on behalf of the Board that, in the light of the word "shall" in Section 6(5)(a), once the Board is seized of a matter it must take some action, i.e. a suspension or attachment of a term or the like, is mandatory upon the Board having considered the matter. The Tribunal does not interpret the relevant sections in that manner. The Tribunal has acknowledged that Section 6(5)(a) is clear, and in itself is unequivocal and inflexible, and that the Board, in the enforcement of regulatory aspects cannot permit breaches thereof to continue indefinitely. The Tribunal however, is still of the opinion that the Board has discretion in the exercise of the powers given to it with respect to action upon a breach of a term or condition of a licence. It is noted that where the Legislature has seen fit to require mandatory action it has done so in clear terms, e.g. by a recent amendment to the Liquor Licence Act (Bill 96, 1978 Session) a 7-day suspension automatically follows a breach of Section 45(2). In respect of what can be taken to be a regulatory requirement the Tribunal believes that in the timing of action taken, caution must be exercised that the action designed to bring about compliance not be in fact a penalty greater than that contemplated. No one can say with certainty that the restrictive term would irreparably harm the business, but in the light of the position put forth on behalf of the licensee that potential is to be considered. The possibility of the equivalent of a revocation of a licence by indirectly putting an operator out of business is a matter worthy of consideration. The Tribunal is not to be taken as being of the opinion that the Board's powers are limited; indeed, in an appropriate case relating to Section 6(5)(a), the Board can exercise all the powers given

it, including that of revocation.

The Tribunal has acknowledged as a basic principle in the consumption of alcohol in Ontario that liquor and food should go together. It is likely that the quantitative amount of food consumed by Diplomat customers in total, in proportion to the quantitative amount of liquor is greater than that of other licensed premises where the balance is met because of the higher prices of the same food in these latter premises. However, the yardstick set out by regulations because of administrative exigencies is the dollar receipt. It is incumbent upon the licensee to so conduct the total operation as to meet that yardstick. It is to be noted the yardstick provides a great deal of flexibility to the licensee in an overall operation. Licensees must accept the fact that the Act and Regulations thereunder are to be enforced as set down.

During the earlier appeal it had been represented that a 3-year period would be necessary to turn around the balance that had been inherited. The Tribunal had been of the opinion that 2 years was a reasonable period. However, it accepts the fact that each situation must be assessed on its own and that what appears reasonable from the outside may not be so from the operating point of view. A three-year period will be up on 22 September, 1978.

The Tribunal in this instance is of the opinion that in the present situation the onus should remain on the licensee to attain compliance by its own methods, either as heretofore carried on or as changed, and that under the present circumstances, a little more time be allowed for the opportunity to do so.

THE TRIBUNAL ORDERS that the decision of the Liquor Licence Board in respect of the said licence be altered to read:

"commencing Wednesday, the 18th day of October, 1978 there shall be attached to the said licence the term and condition that the sale of alcoholic beverages in the rooms specified in the said licence shall CEASE at 11:00 p.m. Monday through Saturday inclusive until such time as the requirements of Section 6 Subsection (5)(a) of Regulation 1008/75 are met provided that if the said requirements are met for the month of September, 1978 the said term and condition shall not at that time become effective but shall become effective on the 18th day of the month following the first month thereafter that the said requirements are not met and provided that the Board may review the said licence in accordance with Section 10 subsection (1) of the Liquor Licence Act and provided that the Board may remove such term and condition in accordance with Section 10 subsection (2) of the said Act" AND THE TRIBUNAL HEREBY DIRECTS the licensee to file monthly reports in respect of the said receipts with the Board

within 15 days of the end of each month until such time as the Board directs otherwise.

KIRKLAND LAKE HOTEL, Kirkland Lake

Dining Lounge Licence and Lounge Licence
issued to
G. A. Bacon Hotels Limited
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON and
BARBARA J. SHAND, MEMBERS

COUNSEL: S. A. GRANNUM representing the Liquor Licence Board
AGENT: G. A. BACON representing the Licensee

DECISION: 25 August, 1978

G. A. Bacon Hotels Ltd. is the licensee (#010360) since October, 1977, of the premises classified as an Hotel and known as Kirkland Lake Hotel, at 53 Government Road West, Kirkland Lake.

The licences issued in respect of the premises are:

Lounge Licence (Serial #8615)
in respect of a room located
Main Floor, Northeast Section
Capacity 188 persons

Dining Lounge Licence (Serial #2106)
in respect of 2 rooms located
1. Main Floor, Centre Section
2. Main Floor, Southwest Section.

The building is 3-storey with 30 bedrooms, of which 5 are occupied by Mr. G. A. Bacon and his family.

The President and sole shareholder of the corporate licensee is Mr. Bacon and he is Manager of the operation.

The licences are subject to certain terms and conditions set out in Regulation 1008/75 Section 5(5)

"Subject to Section 46, no holder of a licence shall permit any person under, or apparently under, the age of eighteen years to enter or be upon the licensed premises".

On the 16th day of March, 1978, a Notice of Proposal to Suspend the liquor licences for 30 days was issued by the Liquor Licence Board for the following reasons:

"3. The licensee is in breach of a term and condition of its lounge licence in that, contrary to Section 5, subsection 5 of Regulation 1008/75, the licensee did by its agents and employees, permit persons under the age of eighteen years to be on that part of the premises licensed as a lounge on the 11th of February, 1978, at 11:00 p.m.

The names of the said persons are:
 Linda Barrette, born 29 Feb. 1960
 Paulette Cholette, born 11 Sept. 1960
 Dawn Clement, born 11 Feb. 1961
 Geoffrey Cory, born 15 Jan. 1961
 Troy Hoffman, born 15 Nov. 1961
 Andrew Howj, born 5 May, 1960
 Crystal Lamothe, born 25 Feb. 1960
 Jeff McLean, born 27 Dec. 1961
 Stan Shelp, born 21 May, 1960
 Kelly Smith, born 20 Jan. 1961
 Karen Thomas, born 2 Sept. 1961

4. Liquor was sold and supplied to the said persons by an employee of the licensee.....

5.the officers of the licence holder failed to ensure that its employees adhered to the provisions of the Act and Regulations or failed to properly instruct its employees concerning the requirements of the Act and Regulations. "

At the Board hearing there were filed certificates of conviction in respect of the said 11 persons for offences contrary to Section 45(4) of the Liquor Licence Act which provides

"No person under the age of eighteen years shall enter or remain on premises in which the sale of liquor is authorized except those classes of premises that are prescribed by the Regulations".

The Board found

"that the licensee is in breach of a term and condition of its 'Lounge' Licence in that contrary to Section 5 Subsection (5) of Regulation 1008/75 of the aforesaid Act, the Licensee did, by its agents and employees, permit persons under the age of eighteen (18) years to be on that part of the premises licensed as a 'Lounge'."

and ordered

"that the 'Lounge' Licence only, issued to G. A. Bacon Hotels Ltd. in respect of the Kirkland Lake Hotel be "SUSPENDED" effective at the opening hour on MONDAY, MAY 29TH 1978 and to continue until the opening hour on WEDNESDAY, JUNE 14TH, 1978."

At the Tribunal hearing, Constable J. G. Tremblay of the Ontario Provincial Police, a special investigator with the liquor law investigation branch, testified as to visits with 2 other officers to the Kirkland Lake Hotel on Thursday, February 9, Friday, February 10, and Saturday, February 11th in response to a request to investigate from the Liquor Licence Board following its receipt of a letter of complaint that minors were frequenting the premises.

He stated that on February 9th there were 25 to 30 patrons and 2 to 5 were apparently under the age of 18. On February 10th there was a much larger number of patrons and a large number apparently under the age of 18. The condition as to age was based in both instances on visual observation.

On Saturday, February 11th at about 11 p.m., Constable Tremblay, together with 2 other OPP officers, 8 Kirkland Lake police officers, and 2 RCMP officers conducted a person-to-person age check. Of some 143 persons present, generally older than the night before, the officers saw fit, based on a visual assessment of who was apparently under the age of 18, to examine about 50-60%, i.e. some 80 individuals. Of these, the 11 persons earlier referred to and 1 other were found to be under the age of 18 and charged. Mr. Sopha, the local inspector (since 1956) with the Liquor Licence Board, was an observer in court later and was of the opinion that of the persons charged, 2 looked young. The checking process lasted a little over an hour. The staff and crowd were fully cooperative and no disturbance of any kind took place.

During the 3 visits, the OPP officers observed no age checks either at the doors or at the tables in the lounge, though they acknowledged that their various points of surveillance did not enable them to view all parts of the premises at any one time.

No evidence was adduced that liquor was sold and supplied to the above mentioned persons.

At the Tribunal hearing there was filed a Certificate of Conviction against G. A. Bacon Hotels Limited for breach of Ontario Regulation 1008/75 Section 5 Subsection (5).

The breach by the Licensee of Regulation 1008/75 Section 5 was not disputed, and the Tribunal finds that the licensee did commit a breach of a term and condition of the

licence. The representations on behalf of the licensee on appeal were in respect of the penalty.

Soon after G. A. Bacon Hotels Ltd. purchased the premises on the 5th October, 1977, G. A. Bacon became aware of problems in the operation. He was visited by an RCMP officer and became aware that he had purchased a "hornet's nest" in that there was a serious drug situation with respect to the patrons who consumed a variety of drugs, and with respect to some of the residents of the hotel. The taking of drugs in some form as estimated by one witness, was participated in by 98% of the patrons. Mr. Bacon devoted most of his attention in the early part of his management to the drug problems and they came to a complete end. Consumption ceased and four residents who were suspected of peddling drugs were evicted from the hotel residential accommodation.

Soon he discerned that the Hard Rock Band which had an engagement contract to provide entertainment was very attractive to young people, especially those under the age of 18. Minors had been discussed at the Board on the occasion of the transfer of the licence. He was reminded of the provisions of the Act and Regulations regarding the presence of minors on the licensed premises and the seriousness attached to any occurrences by Mr. Sopha. Until the occurrence of February 11th, no person, parent, or police officer had made any complaint in regard to minors to Mr. Bacon. Mr. Bacon proffered the view that it appeared to him that he was the only one concerned with any such problem within the community. Nonetheless, he took steps with respect to the matter. He instructed and admonished his staff on a continuing basis that it was the policy of the hotel not to serve persons under 18 years of age, that staff were to ensure that they verified the age of any person about whom they had any doubt before service, that minors discovered were to be asked to leave immediately, and that any table at which there was a minor was not to be served until the minor did in fact, leave. He went so far as to prepare an acknowledgement dated February 3 in regard to this matter - which was signed by members of the staff before commencing a working shift after that date.

Several such staff members confirmed these general and specific actions taken, and that the operation of the hotel had improved greatly under the new management. They acknowledged that Mr. Bacon would not condone under age presence, and always backed up staff with respect to the requirements for proof of age on dealings with minors. Three admitted that on occasion they were too busy to carry out the required checks. They testified that absolute checks were difficult because 'phony' identification was produced and that very rarely was a proof of age card under the regulations in the possession of a person checked.

Mr. Sopha testified as to his contacts with the premises. He visited the hotel during 1978 some 21 times between January to May, nine of the times being before 11 February. During his visits there was nothing in relationship to minors that caught his attention. He confirmed the existence of the drug problem. He brought the smoking of marijuana by patrons to Mr. Bacon's attention and action was taken by Mr. Bacon immediately. His opinion was that Mr. Bacon made honest efforts to improve the Kirkland Lake Hotel operation. He had gotten rid of the 'rough' clientele. Mr. Bacon had cooperated fully with him, had sought assistance and advice with rules, and never refused to carry out suggestions or instructions. Mr. Sopha was concerned generally about minors, though no parent or citizen or police officer had complained to him, and though he was of the opinion that underage drinking in Kirkland Lake was not a major problem. Mr. Sopha never had any occasion to warn Mr. Bacon in respect of any specific incident respecting minors. He had witnessed age checks on a number of occasions - at the door and on the floor, had seen supervision by a waiter and by Mr. Bacon who on weekends, would personally be at the door.

Mr. Sopha recognized the difficulty of ensuring that I.D.'s were valid and advised that he had requested the visit of a team from the Board to issue the identity cards in Kirkland Lake for there were almost none in use.

Mr. Bacon initially was handicapped for, being new in the city, he had personal knowledge of no one. He related that absolute control of entry would require posting men at each of 4 doors including the 2 exits, and that would be a costly procedure. He described that friends would let minors in through panic door exits; one minor was expelled 4 times.

Mr. Bacon explained the occurrence on February 11th by the fact that the employee who was assigned the general duty of supervision on Fridays and Saturdays when a crowd was expected, was prevented from being on duty that night. He didn't want to assign an inexperienced person and thought that staff could cope since a person had been designated as being in charge. He himself was accustomed to supervise, but was personally unable to substitute on the evening of February 11th because of circumstances of a break-in which had kept him up all night. He did not arrive at the premises until a few minutes before the police arrived to make the age check.

Subsequent to February 11th, the Hard Rock Band entertainment was discontinued and Disco entertainment substituted which did not attract the young crowd; the change meant a loss of trade of some \$2,000 per week. Two waitresses and a waiter were dismissed. A doorman has been engaged to control entry and to circulate. Mr. Bacon cited his efforts generally with respect to the operation, his measures

specifically with respect to control of the presence of minors, and the assessment of others of his total operation, in mitigation of the penalty of a 16-day suspension. His plea was that "any suspension of a licence will result in bankruptcy and complete loss of ... life's savings, pretty tough treatment for first offence" and that it was "unjustly harsh for someone only in the business just over 4 months with no previous complaint." He estimated a direct net loss on a suspension to be \$600 weekly.

The Tribunal finds that Mr. Bacon was concerned about the presence of minors and that he exerted certain efforts in control. The Tribunal has noted his general efforts to upgrade the operation and that they were commented on favourably by the experienced inspector, by the executive and members of the Timiskaming Hotel and Motel Association, and by members of the staff who, granted that they might have a self interest, testified forthrightly.

The Provincial Court judge who heard the charge against the licensee for breach of regulation Section 5, subsection 5, assessed Mr. Bacon as "a manager and an operator who can perform a satisfactory job" and imposed a "minimum penalty" of \$200 with a very strong recommendation that this penalty itself be accepted as the penalty in full."

The concern of authorities and the public throughout the province about minors and liquor has been manifest for some time. It has been highlighted by recent debates in the Legislative Assembly of Ontario, by the Legislature in raising the age limit to 19, and in making mandatory a suspension of 7 days upon a contravention of Section 45(2).

In the Kingsway Hotel 1 LLAT Page 64, the Tribunal stated:

"Problems relating to the presence of minors on licensed premises have been within the public realm for some time, and there has been general concern in this regard. The Tribunal reiterates the Board's concern and the heavy responsibility on a licensee to prevent this taking place. We are dealing with a situation which calls for disciplinary action, not only by reason of the continuing and clear failure of management of the licensee to run the establishment in accordance with the law, but that those who are licensed in this trade will be strongly aware of the concern of the Board and its discharge of responsibility in regulating the trade in accordance with the legislation as passed by the Legislature of Ontario. Especially where the chief ingredient in a licensed industry is alcohol with all the associated problems that arise, a board has a right to expect, not a setting forth of the difficulties which are involved in operating a licensed premises, but solutions to these difficulties. This is particularly so in this area where the Board itself is assisting by the provision of Age of Majority cards.

It is clear that the management of the licensee have had a difficult time, yet it is also clear that society and the community have been affected by the failure for whatever reason to carry an operation in accordance with the law".

The licence issued to the licensee has a clear, unequivocal and unqualified term and condition

"...no holder of a licence shall permit any person under, or apparently under, the age of 18 years to enter or be upon the licensed premises"

This Tribunal had occasion to consider such a matter in Cecil Tavern (1 LLAT Page 39) at Page 43

"the words, "permit" or "suffer" have been the subject of judicial comment: in R.v. Royal Canadian Legion (1971) 4 C.C.C. (2d) 196, 21 D.L.R. (3d) 148 (1971) 3 O.R. 552, a decision of the Ontario Court of Appeal the Court had this to say [at pp 202-3] when considering the effect of the two words:

"in the unabridged edition of the Oxford Dictionary we find amongst the definitions for the word "permit" that of "not to prevent". In our opinion the words "permit or suffer" in s.53(4) are used in this connotation. Adopting this meaning s-s (4) would then read: "No person holding a licence under this Act shall not prevent in the premises for which the licence issued - drunkenness".

In the Cecil Tavern case, the Tribunal considered the word "permit" as including the action "not to prevent" the entering or being upon the lounge premises of certain persons under 18.

That court said further:

"In our view, that group of sections in which S53(4) is contained casts on the licensee the statutory duty to insure that....certain specified acts do not occur...the only way in which the responsibility of the licensee can be expressed is to impose upon him, the licensee, the obligation not to permit or suffer the undesirable conduct...."

Section 53(4) is the predecessor of present s.56(5). In Regina v. Action Tavern Ltd. 26 C.C.C. (2d) 127 Greco Prov. Ct. J. discussed the terms [at p. 133]:

"What must the licensee do in order to 'insure that' he does not 'permit' or 'suffer' the undesired acts to take place? The Oxford English Dictionary defines insure as 'to make sure, secure, or certain'. The Court of Appeal of Ontario in the Royal Canadian Legion decision above, said that the statutory duty imposed was that the licensee had to 'insure that certain specified acts do not occur'. What the learned judges said in effect, therefore, was that the licensee was bound by statute to make certain that the prohibited acts did not occur.

How can the licensee accomplish this? In my opinion the dilemma with which he is so frequently confronted is not lacking of solution. Really, common sense itself dictates the answer. It can be said that the licensee would permit or suffer the prohibited conduct if he abstained from taking reasonable steps to make certain that it did not happen. Speaking positively, the licensee should at all times do all that which an ordinary prudent man would do in exercising reasonable diligence in the carrying out of his particular type of business venture. Of course, what is reasonable in one type of business or case may fall short of or exceed that which may be reasonable in another. It has long been recognized in our law that reasonableness is relative and must be proportioned to the circumstances of the case considered as an entirety.

In the present case it is obvious that the accused company, through its chief shareholder and its employees was very familiar with the type of business in which the company was engaged. It is obvious as well, that the accused was cognizant of most, if not all of the problems which always seem to arise when alcoholic beverages are sold. I am satisfied beyond any question, that the accused was, and is, fully aware of the fact, that one of the most serious problems faced by licensees was, and continues to be, the problem of the under-aged, would-be-patron, who presents himself at the licensed establishment with the great expectation of being served. This phenomenon, although not unique in our present-day society, is one of the well-known hazards of the trade in which the accused is engaged. It is a hazard legislated against. It is a hazard against the breach of which the licensee must protect himself by exercising reasonable and constant diligence

in the conduct of his activities. By this I do not mean that he must do all that is humanly possible since such a standard would often require him to be a clairvoyant. The knowledge possessed by the owner of the frequency of attempts made by under-aged drinkers to be admitted to and be served in the licensed premises must put him on his guard and must result in his always taking all reasonable steps to make certain or insure that a breach of the law does not occur".

Mr. Bacon and his staff have recounted the difficulties in the control of entry by minors and their identification at the time of entry, and later, if they have somehow gained admittance. The difficulty of establishing age is clear - both in establishing who is apparently under age, since contemporary dress of young people and other aspects have blurred the line (e.g. 80 persons were checked in this instance to establish 12 under age), and in verifying the age because false identification documents are presented. The difficulties recited did not lessen the responsibility of the licensee.

Mr. Bacon and his staff, the latter directly and through Mr. Bacon, were aware of the attendance of minors on the premises and the difficulties they posed both as to their entry and identification as to their age. The Tribunal finds that the actions taken by Mr. Bacon generally as to the operation and specifically as to minors, commendable as they were, were not sufficient under the circumstances. Difficult situations call for intensified measures and efforts. The difficulties of controlling entrance generally and specifically in the Kirkland Lake Hotel because of the situation of the doors, and the dealing with individuals who were contravening regulations themselves, as well as the prevailing community attitude, should have spurred management not only to instruction and admonishment of staff but to strenuous, positive, preventative action. Inexperience is not an acceptable excuse. A situation where staff are too busy to check should have been discerned and then not tolerated.

No clear evidence has been given that the situation of February 11th was typical in the operation of the lounge. However, even one occurrence, and especially one where 12 minors are involved, is a very serious matter. That it is a first occurrence is also not an excuse.

The Liquor Licence Act has provided a licensee with a clearly acceptable action that may be taken as being reasonable under most circumstances - namely, the Age of Majority card under Section 55 of Regulation 1008/75. Though the card as proof of age under Section 45(6) of the Liquor

Licence Act is only set out as an avoidance of liability in accordance with the said subsection for a contravention of Sections 1 and 2, it may be inferred that following the same procedure by a licensee in respect of Regulation 5(5) would assist in avoidance of a contravention of this latter regulation.

The actual control of minors can only be at the licensed premises level. The role of control is imposed upon the licensee; the responsibility is that of the licensee and the duty is that of the licensee.

If the licensee is able to comply with Section 5 (5) through other means, he may so proceed. However, if there is non-compliance then the licensee is in difficulty. That identity cards issued by the Board are not common in Kirkland Lake is also not an excuse. It is not likely that young people will take even the fairly simple steps required in this regard unless a demand is made that they produce such a card for entry and service. The onus for making such a demand is on the licensee, and it is the licensee who runs the risk which may follow upon no such a demand being made.

What kind of action is taken is all the more important to a licensee when default in taking it brings about a breach of the term and condition and places the licence in jeopardy in the manner that Mr. Bacon described when disciplinary action by way of a suspension follows. Thousands of licensees are in compliance with the section. The Tribunal is of the opinion that the same compliance is required of the licensee in this instance.

Licensees throughout Ontario must appreciate that the Statutory provisions and regulations are to be met, they must be aware that they bear a heavy responsibility. The Tribunal is of the opinion that strict enforcement is basic to the regulation of the conduct of the licensees as provided for in the Liquor Licence Act.

The Provincial Court Judge has made strong recommendation that there not be a double penalty, the concept of which is provided for in the Liquor Licence Act. The Timiskaming Hotel and Motel Association concurred in this recommendation that no further action be taken.

Though the situation is not one that calls for punitive action nor is it one that warrants the setting of an example, the penalty imposed by the Judge must in this instance, be considered as being separate from that required as part of the regulatory process under the Statute. Though there was no act on the part of management that is blameworthy, nor was there any gross inaction, a breach of a significant term and condition has taken place, and the Tribunal is of the

opinion that the seriousness of the matter is such that a further penalty should be imposed.

Mr. Bacon has made a strong case for mitigation of the penalty imposed. Indeed, he has requested that there be no further penalty. The Tribunal is not unsympathetic upon a consideration of the task that confronted him, the efforts expended, and the success obtained. In the present situation there are favourable elements present that should be given consideration in determining a penalty.

The Tribunal hereby orders that the decision of the Liquor Licence Board in respect of the said licence be altered to read "that the 'lounge' licence only issued to G. A. Bacon Hotels Ltd. in respect of the Kirkland Lake Hotel be "SUSPENDED" for ten days" and the Tribunal hereby directs the Board to fix the commencement and termination thereof.

PRESIDENT MOTOR HOTEL, Sudbury

Lounge Licence
issued to
Bidwell Investments Limited
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C. , CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: S.A. GRANNUM representing the Liquor Licence Board
AGENT: PETER A. CROSSGROVE, representing the Licensee

DECISION: 15 November, 1978

Bidwell Investments Limited is the Licensee (#010996) of the premises classified as an hotel and known as President Motor Hotel situate at 99 Elm Street West in the City of Sudbury.

The President and sole shareholder of Bidwell Investments is Mr. Peter Crossgrove. Mr. Crossgrove has had an involvement with the President Hotel for the past nine years, increasing his interest in the hotel through that period of time until he became the sole owner in the late spring of 1977. He sets the policies for the administration and operation of the hotel, but he is not involved in the day-to-day operation.

Mr. Lew Spracklin is an officer of Bidwell Investments Limited and the General Manager of the President Motor Hotel. He has held the latter position since 1963. Prior to that date he had fourteen years' experience at the managerial level at three different private clubs in Toronto and Sudbury. His responsibilities at the President are to carry out the policies set by Mr. Peter Crossgrove, the owner. He has the authority and responsibility for the day-to-day operation. He supervises about 115 full and part-time employees, 55 of whom are involved with the operation of the lounges on the premises.

President Motor Hotel is a downtown motor hotel with 112 rentable rooms. The hotel building has a Toronto-Dominion Bank on the main floor, along with a hairdresser, barbershop, and coinshop-newstand. There are 2 areas licensed under a Dining Lounge Licence (Serial No. A0807), a coffee shop, and a banquet hall with a capacity of 250.

There are 3 areas licensed under a Lounge Licence (Serial #8008) located:

1. Basement, North Centre Section
(referred to herein as Lounge #1 and called the Carousel Lounge by the management).
2. Main (ground) Floor, Centre Section
(referred to herein as Lounge #2 and called the Library by the management).
3. Main (ground) floor, Northwest Section
(referred to herein as Lounge #3 and called the Frontier Room by the management).
This area had been licensed prior to April, 1977 under a Public House Licence.

Lounge #1 has a seating capacity of 223. It is L-shaped and runs along the outside of two walls of the dining room and a part of the kitchen. There are three exits from the Lounge apart from two service doors into the kitchen and the dining room. Since August, 1978, entrance to the Lounge is only permitted through the door which is located at the foot of the stairway leading from the Main Lobby of the hotel. The other two doors are located in the south wall of the lounge and along the northwest corner of the lounge. The door in the south wall leads to the Mayfair lobby which opens onto the rear parking lot of the Hotel. The door along the northwest corner is situated near the enclosed disco equipment area and it opens onto a stairway which leads to the street onto which the hotel faces. There is a dance floor along part of the west wall of the lounge. This lounge caters to young adults between 18 and 25 years of age. It opens at noon. A buffet is served during the afternoon and early evening. The disco entertainment and dancing begin at 9 p.m. Students from Cambrian College and Laurentian University frequent this lounge and the management plans the entertainment to cater to the students from these educational institutions.

Lounge #2, with a seating capacity of 53 is a quiet room used mainly by couples and hotel guests.

Lounge #3 has a seating capacity of 213 and is used by a mixture of ages - but primarily its patrons are pensioners and widowers who use its facilities almost as a club. It has TV for viewing sports events, pinball machines, and a pool table. It has two entrances at the corners of its north wall which open onto the street and one door in the south wall which leads to a corridor of the hotel.

Except for the suspension of the licence by the Liquor Licence Board in August, 1978, the Board has never suspended or revoked licences issued to the licensee, nor has the Board at any time disciplined the Licensee or the management thereof. The local inspector indicated that there had been one Notice of Proposal issued following a fire work order

but this was withdrawn when the work was completed in March, 1977.

Certain gross revenues for the year ending 30 September, 1977 were as follows:

Beverage Department	43%
Dining Room & Banquets	23%
Rooms	34%

On the 29th of June, 1978 the Liquor Licence Board issued a Notice of Proposal to suspend for a period of fourteen (14) days the liquor licence(s) held in respect of President Motor Hotel for the following reasons:

5. "The licence holder is in breach of a term and condition of its licence in that, contrary to Section 5 Subsection (5) of Regulation 1008/75 it permitted persons under the age of eighteen years to enter the premises licensed as a lounge as follows:

- a) Rose Ann Mulcahey, born 15 December, 1959, did enter Lounge No. 2 on the 19th November, 1977
- b) Ronald Anthony Scagnetti, born 30 August, 1960, did enter Lounge No. 3 on the 3rd December, 1977
- c) Helene Cardinal, born 16 October, 1961, Linda Bishop born 10 March, 1960, and Diane Berthiaume, born 1 October 1960, did enter Lounge No. 1, the Carousel Room, on the 17th February, 1978."

After a hearing by the Liquor Licence Board on the 10th of August, 1978 to consider its 'Proposal' the Board issued its decision

"that the Licensee has carried on activities that are contrary to the Liquor Licence Act, 1975 and in particular, Section 5(5) of Regulation 1008/75 under the Liquor Licence Act, 1975"

and

"that the 'Lounge' Licences issued to Bidwell Investments Limited in respect of the President Motor Hotel be "SUSPENDED" effective at the opening hour on Monday, the 28th day of August, 1978, and to remain "SUSPENDED" until the opening hour on Monday, the 4th day of September, 1978"

The licences under the Liquor Licence Act are subject to certain terms and conditions set out in Regulation 1008/75 including

- 5(5) "Subject to Section 46, no holder of a licence shall permit any person under, or apparently under,

the age of eighteen years to enter or be upon the licensed premises".

At the Board hearing there were filed certificates of conviction in respect of the above named persons for offences contrary to Section 45(4) of the Liquor Licence Act which provides

"No person under the age of eighteen years shall enter or remain on the premises in which the sale of liquor is authorized except those classes of premises that are prescribed by the Regulations".

Sgt. Treitz, for 20 years on the Sudbury Police Force and head of the morality squad, testified. In November, 1977 the force appointed a two-man squad to check hotels in the area for minors being in licensed premises.

Sgt. Treitz knew the President Hotel and had visited it many times in the past five years - not necessarily to check for infractions of the Liquor Licence Act every time, but to seek information from patrons on various cases on which he was working. He had observed the odd infraction during that time but had never spoken to the management about them.

Sgt. Treitz was not involved in the incident of November 19, 1977 at the President Hotel. The investigating officer at that time was Constable Robert Bastien, who was not present at the Board hearing of August 10th, 1978 nor at the Tribunal hearing of October 18th, 1978. Sgt. Treitz stated that he had confirmed the events of November 19th, 1977 as he related them to the Tribunal by checking the police reports and the convictions reported at the court. On Saturday, November 19th, at 11:45 p.m. Constable Bastien attended President Hotel and removed Rose Mulcahey from Lounge #1. She was taken to the officer's cruiser where she first informed the officer that she had left her I.D. at home. Then she admitted to being underage and was issued a summary conviction ticket. On December 7, 1977 she was convicted under Section 45(4) of the Liquor Licence Act and fined \$35 plus \$4 costs. No contact was made by the arresting officer with any member of the hotel management or staff. Sgt. Treitz estimated that the number of patrons would probably be about 200 since the hotels were usually quite full on Friday and Saturday nights.

On Friday, December 2, 1977, Sgt. Treitz and another officer entered Lounge #3 at 9:10. Four youths sitting at one table caught the officer's attention because three of them looked under age. On checking their ages, Sgt. Treitz learned that the three that appeared to be minors were actually of age. It was the fourth who was a minor; yet to quote the officer, "If I had spotted the boy sitting alone at a table I probably would not have checked him". The minor's name was Ronald Anthony Scagnetti.

The lounge had about 60 patrons and only the one table of youths was checked by the officers. The officer issued a summary conviction ticket to the youth when the lad was taken outside. On December 29th, 1977 he was convicted under Section 45(4) of the Liquor Licence Act and fined \$35 plus \$4 costs. The police made no contact with the hotel management on the night of December 2nd, nor at any later date about the incident.

On Friday, February 17, 1978, Sgt. Treitz with Sgt. Mills and Constable Cunningham attended the President Hotel at 8:15 p.m. Three female minors were found in Lounge #1 by the above officers. One girl was seated at a table in the darkened area near the disco equipment. Taken outside to the cruiser, she was issued a summary conviction notice and released. The girl was fined \$25 plus \$4 costs. The other 2 females were seated at a separate table. They too, were issued similar summary conviction tickets. There had been other persons at the tables. The room was filled to capacity and about a dozen or so checks were made. The minors were Linda Bishop, Helene Cardinal, and Diane Berthiaume.

The officer noted that there were doormen checking for proof of age at two doors. The police knew that the President Hotel employed off-duty police officers on Saturday for security reasons but these officers were not used to check for the age of patrons. Sgt. Treitz stated that none of the police spoke to any members of the staff of the President Hotel that night; he stated that he did not have discussion with hotel management because it was doing a reasonably good job of controlling on busy nights - "trying to curb minors from entering the premises". He stated that the police did not "anticipate for a moment that as a result of these charges, the hotel would be called to Toronto before the Board".

In response to questioning from Mr. Crossgrove, Sgt. Treitz affirmed that the President Hotel had ample security in that off-duty police officers had been hired for the past year and a half. However, problems arose from staff lacking finesse in picking out minors.

Sgt. Treitz at the Board hearing had stated that in all fairness to the hotel, they had taken reasonable precautions to see that minors did not enter the premises. The officer stated that he believed that some underage young people would use false I.D. cards to gain entrance to licensed premises. They would have friends prop open exit doors for them to get in. They would switch cards with previously accepted patrons in a washroom. They would not admit to police that they had used false I.D.'s, for they feared the punishment which could follow. Since he had no power to arrest them he could not search them. When he was shown a "doctored" Age of Majority card at the Board hearing he said

that he would probably have accepted it.

Inspector C. Foerter, an inspector with the Liquor Licence Board for sixteen years, was assigned to inspect the President Hotel from January to July in 1973, and from July, 1975 to date. He had made frequent visits to the hotel during that time, including spot checks. He had had discussion about matters which are commonly discussed by inspectors and hotel management - such as over capacity, fire doors not being closed, minors on the premises, etc.

In June of 1977 the inspector had attended a hearing at the Board office in Toronto. At that time he was informed that special investigators of the Liquor Licence Board had inspected the President Hotel that month. They told him of the presence of minors in the licensed premises. Upon his return to Sudbury, he spoke to Mr. Spracklin, General Manager of the President, on July 13, 1977 about this matter. At their meeting, Mr. Spracklin acknowledged in writing a receipt of Form LLBO 133A6-74 dated 22 June, 1977 which advises of "infractions which, if continued, may require your appearance before the Board". The form recited amongst other matters, that the special inspector on June 19, 1977, "noted several female patrons who from their appearance were in his opinion, of questionable age". Mr. Spracklin told him that he knew about minors being on the premises and that he had just hired 3 doormen for control in the lounge. Mr. Spracklin said that only Age of Majority cards would be used for admittance of persons of doubtful age.

He had visited the hotel 21 times in 1977 and 10 times in 1978. When asked to compare the security measures in the President with other hotels in the Sudbury area, he said that theirs was as good as any others. He had discussed security including the use of Age of Majority cards with Mr. Spracklin and with Mr. Didianni, the Manager of Lounge #1, many times. The inspector when attending Hotel Association meetings always urged hotel management to use Age of Majority cards.

Asked to pass judgement on the operation of the President Hotel, Inspector Foerter stated that the management was always co-operative. When disco entertainment was introduced in the lounge, more young people began to attend in the lounge. He talked to Mr. Spracklin about the security that was needed to keep out minors, and felt that Mr. Spracklin was doing his best. To quote him, "The President Hotel did not want minors on the premises".

He referred to the incidents which had been mentioned in evidence, i.e. the one in the memo of July 13, 1977 and those of November 19th, 1977, December 2nd, 1977, and February 17th, 1978. He stated that they were well spread out and perhaps the minors had slipped in on special nights -

"perhaps someone goofed".

The inspector said that sometimes minors tip waiters heavily to get them to ignore their age. Sometimes minors used false I.D.'s to gain entry to licensed premises - but they would never show these false I.D.'s to the police when checked.

The inspector said that security problems were sometimes increased in hotels because of the need to comply with fire regulations. Some hotels are designed so that fire regulations can be met without making security difficult.

With respect to the incidents, the inspector could not be certain whether or with whom he had a discussion, but he was of the opinion that someone in a management capacity would be aware that the police were there. The inspector had never met Mr. Crossgrove but he was very familiar with the management and staff of the President Hotel.

The inspector was not present at the Board hearing on August 10, 1978.

James Shonwise, in the hotel business for 32 years, has been bar manager in the President Hotel since 1964 in the Carousel Lounge. He felt that the security was very good. He never had less than 4 security men on duty on Saturdays or other busy nights. On occasions he had five men plus himself - on those nights he used the extra man as a floater in the centre of the room. These men were usually university students of 23 or 24 years of age. His supervisors at the hotel came in frequently as observers.

He is familiar with the legislation about minors in licensed premises. It was his sole responsibility to administer the security of the bar and he had no interference from the owner. He instructed his waiters that they were not to serve minors and they were to keep them out. Individuals who were over 18, even 24 or 25 years of age, had been refused admission because they did not have acceptable evidence of their age. He never deliberately served minors or permitted them to be served. Since the incidents which resulted in the suspension he had tried new ways to improve the security. All entries must be made through one door - that one at the foot of the stairs leading down from the main lobby. There are two men on each door of the lounge and they only permit patrons to exit through the back and side doors.

When they accepted birth certificates as proof of age they used various means of testing the people who carried these certificates, i.e. by asking, "what is the year of your birth? What is your middle name?" If the responses were not quick in coming, the individual would be refused admission.

He spoke of the ease with which Age of Majority cards could be falsified.

Several falsified cards which had been found by the hotel staff were introduced as evidence. The falsification which included a substitution or a superimposition of a photo was not readily detected. The procedures were simple. In some instances a department store laminating machine had been used. In another, saran wrap had been used in the cover up.

If he found that the university students whom he hired were admitting their underage friends, he fired them immediately. The management had put up a sign stating only Age of Majority cards accepted about eight or ten months ago. In the last few months the size of the signs had been enlarged and they are put up by the doormen when they come on duty about 9 p.m. just as the disco entertainment starts. For about a year the signs had stated that 3 pieces of identification were needed - now they say Only Age of Majority Cards or photo cards are acceptable.

He has rules of operation printed and he goes over them regularly with the staff. The staff are also shown Age of Majority Cards. He believes that the President Hotel was the first hotel in Sudbury to insist on the use of Age of Majority cards. Their use goes back quite a few years. He felt that they had lost some customers because they were not admitted without proper I.D. even though they claimed they were over 18.

Sarah Signoretti has been a waitress at the hotel for 5 years. For the past two years she has worked on the floor as well as in the bar of the Carousel Lounge. She would not serve a minor who had got through the door when she was on the floor. She knew that some waitresses and waiters didn't care whether or not they served minors. She feels that the President does a better job than other hotels in controlling the admission of minors. She has refused admittance to some people and has lost friends and gained enemies over her insistence on following the rules.

When the lounge was busy on Friday or Saturday nights she still felt that she could recognize anyone who was under 18. Strangers might think some patrons were underage, but she could, with her experience, tell their age because the clientele was basically regular.

Morris Roleau, in the hotel business for 18 years, now Innkeeper of the Holiday Inn in Sudbury, came forward to testify on behalf of the licensee. Mr. Roleau stated that he had the same problems with controlling the entrance of minors to his licensed premises as did the President and every other

hotel. It was a constant battle to control the young people. He was of the opinion that the Age of Majority card has helped some. The type of entertainment which is provided for the young people contributes to the problem, for the underage want to do the same things as those who are just a little older. Mr. Roleau accepted that the responsibility rests with management to control the entrance of minors but maintained they should be assisted through legislation. There should be legislation passed that makes it mandatory for everyone over the age of 18 to carry a photo card, and that should be the only acceptable way to gain entry to licensed premises. This would greatly cut down on the margin of error in the operation of the lounges. Unless they check everyone, they are at risk.

He stated that hotel management had no protection if they admitted someone who had used a false I.D. who was later checked by the police and who refused to show the false I.D. to the police or to admit having used such false I.D.

Mr. Spracklin testified as to the operations of the the President Hotel.

He meets daily with the bar managers of the hotel and is present in the bars almost nightly from 10 p.m. on. During the past year about \$28,000 has been spent on general security in the hotel. He did not learn of the three incidents mentioned in the Notice of Proposal until July 4th, 1978. He felt it would have been useful to have known about the police actions on the dates when they occurred. He could have acted to correct the situation by questioning the staff employed at that time. He could probably have found out how minors got into the lounge, but he would suppose they used false I.D.'s.

The security at the hotel has been changed since about July, with a lot of stringent controls. Even so, with all the added manpower and the restricted entrance he was able to find a minor on the premises the night before the Board hearing. A girl had "borrowed" her sister's I.D. It was verified that it was not hers by phoning her home and checking with her mother the name of the daughter who was at home. This was the name on the I.D. The police were called about this matter.

Whenever he has found a minor on the premises he has removed them immediately. He leaves the supervision of such matters to his staff--but if a patron draws his attention to an infraction he acts on the matter. He stated that a suspension could lead to a wage loss of \$8,000 by the hotel staff.

In January, 1977, a team had visited at Laurentian University and Cambridge College to issue Age of Majority cards. Mr. Spracklin attended the meetings representing

the Sudbury District Hotel Association on a voluntary basis.

The Tribunal finds, as detailed herein, that certain minors entered the licensed premises of the licensees. The further question to be determined is whether the licensee permitted the same contrary to Regulation 1008/75 Section 5, Subsection (5).

In R.v. Royal Canadian Legion (1971) 4 C.C.C. (2d) 196, 21 D.L.R. (3d) 148 (1971) 3 O.R. 552, a decision of the Ontario Court of Appeal, the Court had this to say [at pp.202-3] when considering the effect of the two words: "permit" or "suffer"

"In the unabridged edition of the Oxford Dictionary we find amongst the definitions for the word, "permit" that of "not to prevent". In our opinion, the words "permit or suffer" in s.53(4) are used in this connotation".

In the instant case the Tribunal considers the word "permit" as including the action "not to prevent" the entering or being upon the lounge premises of certain persons under 18.

The court said further:

"in our view, that group of sections in which S53(4) is contained casts on the licensee the statutory duty to insure that....certain specified acts do not occur... the only way in which the responsibility of the licensee can be expressed is to impose upon him, the licensee, the obligation not to permit or suffer the undesirable conduct..."

In Regina v. Action Tavern Ltd. 26 C.C.C. (2d) 127, Greco Prov. Ct. J. discussed the terms [at p. 133]:

"What must the licensee do in order to 'insure that' he does not 'permit' or 'suffer' the undesired acts to take place? The Oxford English Dictionary defines insure as 'to make sure, secure, or certain'. The Court of Appeal of Ontario in the Royal Canadian Legion decision above said that the statutory duty imposed was that the licensee had to 'insure that certain specified acts do not occur'. What the learned judges said in effect, therefore, was that the licensee was bound by statute to make certain that the prohibited acts did not occur.

How can the licensee accomplish this? In my opinion the dilemma with which he is so frequently confronted is not lacking of solution. Really, common sense

itself dictates the answer. It can be said that the licensee would permit or suffer the prohibited conduct if he abstained from taking reasonable steps to make certain that it did not happen. Speaking positively, the licensee should at all times do all that which an ordinary prudent man would do in exercising reasonable diligence in the carrying out of his particular type of business venture. Of course, what is reasonable in one type of business or case may fall short of or exceed that which may be reasonable in another. It has long been recognized in our law that reasonableness is relative and must be proportioned to the circumstances of the case considered as an entirety.

In the present case it is obvious that the accused company, through the chief shareholder and its employees was very familiar with the type of business in which the company was engaged. It is obvious as well, that the accused was cognizant of most, if not all of the problems which always seem to arise when alcoholic beverages are sold. I am satisfied beyond any question, that the accused was, and is, fully aware of the fact, that one of the most serious problems faced by licensees was, and continues to be, the problem of the underaged, would-be patron who presents himself at the licensed establishment with the great expectation of being served. This phenomenon, although not unique in our present-day society, is one of the well-known hazards of the trade in which the accused is engaged. It is a hazard legislated against. It is a hazard against the breach of which the licensee must protect himself by exercising reasonable and constant diligence in the conduct of his activities. By this I do not mean that he must do all that is humanly possible since such a standard would often require him to be a clairvoyant. The knowledge possessed by the owner of the frequency of the attempts made by under-age drinkers to be admitted to and be served in the licensed premises must put him on his guard and must result in his always taking all reasonable steps to make certain that a breach of the law does not occur".

Did the licensee herein, Bidwell Investments Limited, at all times do all that which an ordinary prudent man would do in exercising reasonable diligence with respect to preventing the entry and presence of minors and so insure that the act prohibited in Section 5 Subsection (5) did not occur?

When Disco entertainment was introduced in Lounge #1, the Carousel Room, management should have been aware that they were creating an environment which would be attractive to, and did in fact attract, not only young persons of majority age, but also those under age. This would call

for more stringent measures than otherwise to match the situation. The incidents that occurred demonstrated that these were not applied until after certain incidents.

Management was aware in July, 1977, by reason of the discussion by the inspector with Mr. Spracklin that young ladies of questionable age were on the licensed premises. This warning should have called for an examination of all the procedures in force to determine what was wrong and a satisfactory answer found.

Management long in the hotel business were thoroughly cognizant of the deceptive measures used by young persons to be permitted on the premises. This knowledge required management to exercise measures competent to meet the deceptive actions. That ordinary personal documents, e.g. birth certificates, driver's licences, hospital cards, and the like, lent themselves to easy falsification or improper use should have put management on guard with respect to reliance on such documents. This is not to say that such documents cannot be accepted; it is when minors are found on premises that having resorted to them places the licensee in a weak position. General reliance on the mere presentation cannot be a reasonable measure where detailed and slow examination is difficult.

Evidence was introduced that the cards issued by the Board could be falsified and there is no doubt the falsification demonstrated was simple and easy to bring about. However, it is clear that though the card may not have been perfect it was the best method to date. This had been discussed by the inspector. Any licensee that does not restrict an acceptable I.D. to such a card is running the risk of being found not to be exercising reasonable precaution.

The physical layout of Lounge #1 (Carousel Lounge) and its site with respect to lobbies, exits, and doorways, must have been known to the management as presenting problems in maintaining security and as being susceptible to improper entry by minors.

The Tribunal finds that the licensee did not act as a prudent person with reasonable diligence with respect to entry of minors into Lounge #1. Adequate measures in this regard were not taken until after the incidents described.

The Tribunal finds that there has been no fault demonstrated in respect of Lounge #2. It is again noted that the site and entrance of Lounge #2 are completely separate from that of Lounge #1.

The Tribunal finds no fault within the meaning of this section on the part of the licensee with respect to the minor in Lounge #3. The experienced investigating officer was

of the opinion that the minor was of majority age and in the ordinary course would not have been checked by him. The licensee cannot accordingly be faulted for this minor's entry and being in the licensed premises. It is again noted that the site and entrance of Lounge #3 are completely separate from those of Lounge #1.

Management of the licensee has complained about the delay in bringing the incidents to their attention and the difficult position it created in matters of proof. In this instance, the licensee may have been advised only upon receipt of the Notice of Proposal. The police did not bring the incidents to the licensee's attention because they did not think that the licensee was affected, and there is no clear evidence that the inspector had occasion to bring incidents to the attention of management. On behalf of the licensee it was argued that innocent employees will suffer the consequences of a suspension. This is regrettable but enforcement of the provisions of the Act cannot be secondary. This is a consequence that the licensee must be presumed to have been aware of during the course of the operation, and is a matter which a licensee could bring to the attention of his employees during instruction.

The Board has suspended the lounge licence, thereby affecting all areas of lounge service, i.e. Lounge #2, the Library, Lounge #3, the Frontier Room, as well as Lounge #1, the Carousel Lounge. The Tribunal found no shortcoming in the operation of Lounge #2 and Lounge #3. They are separate. The Tribunal finds no action or inaction on the part of the licensee that calls for a punitive penalty generally. Indeed, the licensee's general operation has been favourably commented on and there is no doubt but that it enjoys an excellent reputation in this connection.

Accordingly, the Tribunal is of the opinion that the penalty should be restricted to the Carousel Lounge where the breach took place. The Tribunal sees no reason to change the duration of the penalty.

The Tribunal finds that the licensee, Bidwell Investments Limited, was in breach of a term and condition of its lounge licence in that contrary to Section 5, Subsection (5) of Regulation 1008/75 under the Liquor Licence Act, the licensee did permit persons under the age of 18 years, namely, Rose Ann Mulcahey, Helene Cardinal, Linda Bishop, and Diane Berthiaume, to enter and to be in that part of the premises licensed as a lounge, as detailed herein.

THE LIQUOR LICENCE APPEAL TRIBUNAL hereby alters the decision of the Liquor Licence Board by changing the Order dated 10 August, 1978, of suspension of the Lounge Licence herein to an attachment of a term and condition to the said

licence, that Lounge #1, basement, north centre section - Carousel Room, be closed for the sale, service and consumption of liquor for a period of seven days, to be set by the Liquor Licence Board, and the Tribunal hereby so orders.

NORTHBURY HOTEL, Sudbury

Lounge Licence
issued to
Northbury Hotels Limited
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM, and
BARBARA J. SHAND, MEMBERS

COUNSEL: S.A. GRANNUM representing the Liquor Licence Board
AGENT: A.L. FAVRETTO representing the Licensee

DECISION: 15 November, 1978

Northbury Hotels Limited is the licensee (#010903) of the establishment classified as an hotel and known as Northbury Hotel situate at 50 Brady Street, Sudbury. The hotel has been in operation since 1972. Its facilities include 78 double rooms.

Northbury Hotel is owned by the licensee corporation of approximately 65 shareholders, with no one shareholder or group of shareholders having a controlling interest. The President is Mr. A. Favretto who takes an active role in the operation. Mr. A. J. Pianosi is an executive director who takes an active interest in the management. Mr. H. Kerby is Manager.

The licences issued in respect of Northbury Hotel are:

Dining Lounge Licence Serial #A1113 in respect of 3 rooms on the ground floor:

1. Southwest centre section
capacity 70
2. Northeast centre section
capacity 67
3. Centre section
capacity 130

Rooms #2 and #3 have a sliding partition which when not in position enables a ballroom of 300 - theatre style.

Lounge Licence Serial #8161 in respect of 2 rooms on the ground floor:

1. Centre section
capacity 51
2. Southeast section
capacity 183.

Lounge #1 off the main entrance adjoins the Dining Lounge #1. It is patronized predominantly by business men. A young person there would stand out.

Lounge #2 is separated from the Lounge #1 area by Dining Lounges 2 and 3 and by cloakroom and washroom and service areas. It adjoins a secondary lobby which has a separate entrance to the outside. There is an entrance into Lounge #2 from that lobby. There is an emergency exit door at the opposite corner leading to the outside and rear parking lot. There is no outside handle on this door. There is a dance floor, bar, and disco music area within this lounge. By reason of the dance floor the capacity is reduced to 183.

On the 23rd of June, 1978 the Liquor Licence Board issued a Notice of Proposal to suspend for a period of ten (10) days the liquor licence(s) issued to Northbury Hotels Limited for the following cited reasons:

"5. The licence holder is in a breach of a term and condition of the licence in that, contrary to Section 5 of Regulation 1008/75 under the Liquor Licence Act the licence holder did, on Friday, January 27th, 1978, at approximately 10:00 p.m. permit persons under the age of 18 years, namely Martha Alvarenga, born 13 Nov. 1961, to enter and be upon the licensed premises known as Lounge #2.

6. On the said date, the licence holder had failed to instruct its employees to check the ages of persons apparently under the age of 18 years prior to their admittance to the licensed premises."

At a hearing of the Liquor Licence Board on the 10th of August, 1978 to consider its proposal, the Liquor Licence Board issued its decision:

"that the Licensee has carried on activities that are contrary to the Liquor Licence Act, 1975 and in particular Section 5(5) of Regulation 1008/75 under the Liquor Licence Act"

and

"that the Lounge Licences issued to the Northbury Hotel be "SUSPENDED" effective at the opening hour on Monday, the 28th day of August, 1978 and to remain "SUSPENDED" until the opening hour on Thursday, the 31st day of August, 1978".

At the Board hearing there was filed a certificate of conviction in respect of the said Martha Alvarenga for an offence contrary to Section 45(4) of the Liquor Licence Act which provides,

"no person under the age of eighteen years shall enter or remain on premises in which the sale of liquor is authorized except those classes of premises that are prescribed by the Regulations".

The licences are subject to certain terms and conditions set out in Regulation 1008/75 including:

5(5) "Subject to Section 46, no holder of a licence shall permit any person under, or apparently under, the age of eighteen years to enter or be upon the licensed premises".

The hotel has never been disciplined under the Liquor Licence Act until the board action which is the subject of this hearing.

Police Constable Vic Collison, an officer with the Sudbury Regional Police for 13 years, testified that on 27th January, 1978 about 10 p.m. he and another constable in response to a request for assistance from another team of officers relative to a check on the presence of minors, attended the Northbury Hotel.

Upon entering the secondary lobby he noted that one, James Carson, as a doorman was turning away patrons because Lounge #2 was full, and so informed the constable. He advised the doorman that he was a constable acting on a complaint and entered Lounge #2 which he found in fact to be near full, if not full. At a south wall he noticed immediately a table with several young persons. Three females there appeared to be under age - one did not appear to be more than 15 or 16. When he requested identification by way of proof of age, he obtained it from all except the one. She got up and asked a male to dance, but Constable Collison blocked the way. When she, Martha Alvarenga, was asked for an identity document she said she had none. She said she was born on 13 November, 1959. The constable told her he did not believe her and asked her to come to the foyer. They passed the doorman and she started to cry. Then she admitted that her date of birth was 13 November, 1961.

He advised her that she would be summonsed, which she was, with respect to Section 45(4) of the Liquor Licence Act. On the 15 February she appeared in court, pleaded guilty, and was fined \$25 and \$3 costs or 3 days.

After removing Martha Alvarenga, the constable did not return to the lounge since he knew that once he had "made a hit" he was through and that there would be no purpose to going back because other offenders, if any, would have disappeared.

At that time the officers checked 11 persons of the number present as appearing under age, and only the one (Martha Alvarenga) could not produce proof of age and she was the only one under age and summonsed.

Of the other 3 persons checked by him, one had produced a student's card, a driver's licence, and a birth certificate, one a driver's licence, and the other a document which he could not recall. When asked, the officer was of the opinion that it was not only possible but probable that Martha Alvarenga had produced a false I.D. He reiterated this opinion.

A method of using a false I.D. was for one young girl of majority age to present an identification of majority age, gain entry, then slip out to the washroom to give that identification to the under age girl - who would present it to the doorman for entry for herself. There could be sloppiness on the part of the doorman if he only looked at the age and did not notice, for example, that a girl of 5'2" was presenting a document that referred to 5'10". He knew that it was tough for doormen to make the check. He had never seen an Age of Majority card. At the time of his visit he did not see any sign that referred to the Age of Majority card. In his judgement there was no fault on the part of management.

Constable Collison stated that the Northbury Hotel was one of the less frequently visited hotels in the Sudbury area.

The constable did not advise anyone other than the doorman, Carson, as to the incident as he felt no duty in that regard, leaving it to Mr. Carson to inform management.

After the incident he returned to the station to make out a general offence report.

Inspector Sweet of the Liquor Licence Board, serving for 16 years in Sudbury, had no personal knowledge of the above incident. He testified about the operation of the hotel generally, and Lounge #2 in particular.

His overall assessment of the Northbury Hotel was that it was one of the better operated ones in Sudbury. He was of the opinion that there was a "reasonable amount of security" in Lounge #2, which had a good reputation.

In the secondary lobby an initial screening took place at the admission ticket vending table, and a second screening took place at the entrance by the doorman. He had never seen anyone come in by the other entrance. Aware that disco entertainment attracted young people, he especially directed his attention to the possibility of under age persons

on the premises, but recalling through the six-month period prior to January, 1978, he could recall no specific occurrence. Indeed, he could recall only one occasion when he felt an inquiry was necessary, and the person turned out to be of majority age. He had discussed the matter of minors generally with management only in the course of his duties as inspector.

Inspector Sweet became aware of the incident on the 19th of May, requested a certificate of conviction which was obtained on the 29th of May - which he forwarded to the Board on the 1st of June, 1978.

Irene Della Vedova, engaged at the Northbury Hotel for 4 years and as manager of Lounge #2 for the past year, testified as to the operation of the lounge. As a result of instructions from the manager, she held periodic meetings to instruct staff generally, and respecting minors particularly. Such a meeting had taken place a week prior to January 27th and Mr. Carson, who had been doorman at Lounge #2 for a year, was present. Mr. Carson, along with other employees, was instructed to check the ages of persons apparently under the age of 21 years prior to their admittance to the licensed premises. He had in fact made such refusals. On Fridays and Saturdays a second doorman was on duty. In addition, inside staff, as instructed by management, double checked for under age persons. She and another person were floaters, moving about the lounge double checking as needed. She did have occasion to ask young persons to leave. She described the determination of age as a very onerous responsibility, especially in respect to young women in that it was possible for a 16-year-old girl to make herself look 20 through make-up and dress. She was aware of the false I.D.'s and her instructions were to ask for 3 pieces of identity - one with a picture - and not to grant admittance if there was no I.D. She testified that the hotel had now posted a sign regarding minors - that there could be prosecution - and that only age of majority cards were acceptable. The sign had a positive favourable effect.

Mr. Carson, age 22, left the employ of the hotel some 2 or 3 weeks after 27 January because he could not stand the pressure of checking I.D.'s.

Roxanne Peche, employed by the Northbury Hotel for 3 years and as bartender in Lounge #2 since January, 1978, confirmed the instruction procedures described by Miss Della Vedova.

Mr. A. J. Pianosi, an executive director of the hotel, testified as to the general policy of those associated with the licensee corporation. It was their intent to operate a fine hotel. He strongly denied any inference that the establishment would cater to under age persons in violation of

the law or that there was incentive to do so. The manager, Kerby, had no ownership interest. No shareholders or children worked for the hotel as a policy since inception. Room rental was the greatest revenue producer. Of the lounges, Lounge #1 was the greater producer per capita - Lounge #2 in volume.

On behalf of the hotel it was pointed out that in respect of Lounge #2, dress restrictions (no jeans) price structure, and weekend cover charges (the highest in Sudbury) were deliberately designed to keep out under age persons. The provisions of security by way of 2 doormen, the double check by inside employees, the lounge supervisor and other floater, the periodic instructions and requirements in checking ages, were put forward as a reasonable effort, care, and diligence on the part of management in respect of minors.

Mr. Favretto pointed out that the delay between the time of the incident, 27 January, 1978, and the notification through the Notice of Proposal, 23 June, 1978, handicapped the licensee in establishing the action taken in respect of the specific under age person involved.

The Tribunal finds that on 27 January, 1978, one Martha Alvarenga, a person under the age of eighteen years, was upon the licensed premises, Lounge #2.

The further question to be determined is whether the licensee did permit her to enter and be upon the said premises and so be in contravention of Regulation 1008/75 Sec. 5 Subsection (5).

[NOTE: The Tribunal referred to R.v. Royal Canadian Legion and Regina v. Action Tavern Ltd. as set out in re. Bidwell Investments Limited, Licensee - President Motor Hotel].

Did the licensee herein act prudently and with reasonable diligence in insuring at all times that no person under the age of 18 enter and be upon the licensed premises, and accordingly, can the inference be drawn that the licensee acted prudently and with reasonable diligence on the night of 27 January, 1978 .

Mr. Grannum, Counsel for the Board, acknowledged the difficulty in the light of the evidence before the Tribunal in determining a breach by the licensee of the regulation cited. There was no evidence supporting the allegation set out in Paragraph 6 of the Proposal that there was failure in instruction; indeed, it was emphatically denied and contradicted not only by the employees, but by the constable. There were no adverse reports with respect to the operation by the inspector. The police officer found no fault with the security. Only one person was discovered to be under age of 11

persons checked out of the substantial number present. He posed the question, "should the presence of 1 under age person lead automatically to a penalty?"

Citing Regina v. Action Tavern, Mr. Grannum in his summation could not say with certainty in respect of the determination of reasonable diligence of the licensee that there was fault with security. He did not suggest that failure to rely only on Age of Majority cards was imprudent in the circumstances or indicated lack of reasonable diligence.

The Tribunal accepts as a principle that once the presence of an under age person on licensed premises is found as a fact, there is still the question to be determined whether the licensee acted prudently and with reasonable diligence to prevent, i.e. not to permit, such entry. The Tribunal finds that Northbury Hotels Limited, acted prudently and with reasonable diligence to prevent the entry.

The Tribunal finds that the licensee herein acted prudently and with reasonable diligence not to permit Martha Alvarenga to enter and be upon the licensed premises.

THE LIQUOR LICENCE APPEAL TRIBUNAL hereby orders that the decision of the Board on the 10th day of August, 1978 suspending the lounge licence issued to Northbury Hotels Limited in respect of Northbury Hotel be revoked.

PETER PIPER HOTEL, Sudbury

Lounge Licence
issued to
James Booth Enterprises Limited
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: ELMER W. SOPHA, Q.C. representing the Licensee
S.A. GRANNUM representing the Liquor Licence Board

DECISION: 15 November, 1978

James Booth Enterprises Limited is the licensee (#011325) of the premises classified as an hotel and known as Peter Piper Inn (Peter Piper Hotel) situate at 151 Larch Street in the City of Sudbury.

The operators, the Booth Family, have been in the restaurant business in Sudbury since 1907. In 1968 a dining lounge licence (#87590) was granted to the Peter Piper Restaurant. In 1976 construction was started on the hotel of 45 rooms adjacent to the Peter Piper Restaurant, and the licensee was licensed on June 17, 1977.

The hotel provides luxurious accommodations, and the dining room is one of the finest in the city, and award winning. The total operation is of high calibre.

Equal shareholders and officers of James Booth Enterprises Limited are:

Peter J. Booth, President, age 42
Charles Booth, Vice-President, age 39
Philip Booth, Treasurer, age 26
Margareta Booth, Secretary, age 65.

Peter Booth and Charles Booth are co-managers.

The licences issued are as follows:

Dining Lounge Licence Serial #A3149 in respect of
2 rooms located:

- #1. Main Floor, Northeast section
Peter Piper Restaurant capacity 94
- #2. Main Floor, Centre section
Elizabethan Room capacity 39

Lounge Licence Serial #L0347 in respect of
2 rooms located:

- #1. Basement, North-west section
Drawbridge Disco capacity 145
- #2. Main Floor, North-west section
Lorde Nelson Lounge capacity 52

Lounge #2 (Lorde Nelson) in the area of Dining Lounges 1 and 2, is completely separate from Lounge #1 both as to site and entrance. It is patronized chiefly by business members of the community, government officials, and the like. A young person is there infrequently, and would stand out.

Lounge #1 (Drawbridge Lounge) is in the basement with its own entrance, and is the only area serving patrons there. Ordinary access to the lounge is via a flight of stairs down leading to a cloak room past a dividing rope through a door (herein called A). There is also a door (herein called B) at the centre of the lounge leading to a corridor which gives access to an elevator, to washrooms at the rear and further along to a fire exit. There is another door (herein called C) at the rear corner of the lounge in the vicinity of the bar and servery which also opens to the corridor to give access to the same washrooms and fire exit.

The lounge was especially designed as a disco lounge with a dance floor which, to illustrate the modern design, is of fibre glass lit from underneath. It was designed to attract and is patronized in the main by young persons. It has a character and atmosphere quite in contrast to the rest of the operation and was described as being 'different'.

Receipts generated are 75% from the dining and guest rooms, and the balance from the 2 lounges - with the Drawbridge having a slightly larger volume than the Lorde Nelson.

On the 9th of June, 1978, the Liquor Licence Board issued a Proposal to SUSPEND for a period of fourteen (14) days the liquor licence(s) for the following reasons:

- "4. The licence holder is in breach of a term and condition of its licence in that, contrary to Section 5, subsection (5) of Regulation 1008/75 under the Liquor Licence Act, the licence holder permitted persons under the age of 18 years to enter and be upon the licensed premises known as the Drawbridge Lounge.

5. On 3rd February, 1978, the following persons were present in that part of the premises licensed as a lounge, namely, Thomas Elson, born 5th March/60, Patrick Michael Pitz, born 3rd June /60, Anthony J. Midena, born 11th Feb/59.

6. On the 17th February, 1978, the following persons under the age of eighteen years were present on the premises licensed as a lounge, namely, Carmen Cecile Jarry, born 5th Sept./60, John Gravelle, born 9th Dec. /60 and Carla E. Bussolaro, age 17 years."

At the Board hearing on July 25, 1978 to consider the proposal, the allegation with respect to Anthony J. Midena was not proceeded with.

At the hearing there were filed certificates of conviction in respect of the above named persons for offences contrary to Section 45(4) of the Liquor Licence Act which provides:

"No person under the age of eighteen years shall enter or remain on premises in which the sale of liquor is authorized except those classes of premises that are prescribed by the Regulations"

After the hearing the Board issued its decision:

"that the Licensee is in breach of a term and condition of its Lounge Licence in that, contrary to Section 5 Subsection (5) of Regulation 1008/75 of the aforesaid Act, the Licensee did permit persons under the age of eighteen (18) years to be on that part of the premises licensed as a 'Lounge'.

and

"that the 'Lounge' Licence only issued to James A. Booth Enterprises Limited in respect of the Peter Piper Hotel be "SUSPENDED" effective at the opening hour on Monday, August 14th, 1978 and to continue until the opening hour on Monday, August 21st, 1978".

The licences are subject to certain terms and conditions set out in Regulation 1008/75 including:

5(5) "Subject to Section 46, no holder of a licence shall permit any person under, or apparently under, the age of eighteen years to enter or be upon the licensed premises".

Norval Sweet, an inspector with the Liquor Licence Board for 16 years in Sudbury, testified as to the general operation of the hotel. He had no personal knowledge of the alleged incidents. He had made some 14 routine calls from the 21 January to the end of 1977, including 8 spot calls in the evening. The only discussions he had had respecting minors were with Charles Booth in July, 1977 and that was as part of a general discussion regarding operations. Because of his awareness of the attractions of a disco to young people, he had kept a special eye out for minors and he did not recall any occasion where he had reason to have an age checked in his presence.

Sgt. Malcolm Mills of the Sudbury Regional Police since 1972, now in the morality section, testified as to visits to Peter Piper Hotel as part of his duties.

On the 3rd of February, 1978 in the company of Constable Treitz in plain clothes, he carried out age checks in the Drawbridge Lounge. The procedure was for a constable to be stationed so as to prevent exit and for Sgt. Mills to go through the lounge, checking those who looked under age, requesting production of proof of age. The checking lasted about half an hour. Of the some 110 persons present, 3 were removed from the lounge, among them Thomas Elson, born 5 March 1960, and Michael Pitz, born 3 June, 1960. Summary conviction tickets were issued to them for contravention of Section 45(4) of the Liquor Licence Act.

On the 17th February, 1978 in the company of Constables Treitz and Cunningham, he again carried out age checks. The number of patrons in the establishments was similar. Carmen Cecile Jarry, born 5 Sept. 1960, John Gravelle born 9 December, 1960, and Carla E. Bussolaro, age 17 years, were removed and issued summary conviction tickets.

During the checks various persons produced liquor Licence Board Age of Majority cards. The persons checked and found to be of proper age were far greater in number than those found under majority.

Sgt. Mills stated he had visited the lounge frequently on other matters and did not on those occasions see anything by way of minors that he saw fit to check. He stated that there were people obviously checking patrons coming through at the bottom of the stairs before entry to the lounge and he had seen checks being made when he was there. Management were serious and cooperated.

Mr. Peter Booth, a professional engineer by profession with training in law and business administration, having been employed heretofore as a financial officer for 11 years, testified on behalf of the licensee. His special

interest was in the Drawbridge Lounge, the affairs of which took his complete attention and where he spent most of the time during operating hours of 8 p.m. to 1 a.m. Monday to Saturday. At other times he was engaged in other matters relative to the hotel. He described the screening procedures. After receipt of a letter from the L.L.B.O. approximately a year before the lounge opened in respect of Age of Majority cards, they were used from the beginning. Screening before entrance is permitted at Door A takes place at the lounge vestibule entrance at the roped-off area by a doorman, assisted by himself when there is an influx. Anyone appearing under age is challenged to produce proof of age. About 50% produce LLB certificates. If the person does not have a certificate and looks over 20, 3 pieces of identity are requested, e.g. birth certificate, driver's licence, and other photo I.D. If the person looks about 18, 19, 20 and does not have a certificate, the person is not admitted. A hostess who thereafter seats patrons also does a double check if she thinks it necessary. If during continuing checks an underaged person is found, the person is evicted.

In February, 1978 there had been a sign in the vestibule respecting minors, 7" x 11" in size.

Prior to February, 1978 they had concluded that young persons could gain access to the lounge by the elevator, so an adjustment was made to lock out the Drawbridge level.

Mr. Booth acknowledged that the fire door exit presented a problem. On a number of occasions a young person would gain admittance properly and let others (under age) through the fire exit, whereupon they could enter through Door B. The supervision of this area could not be made by the doorman unless he stepped some considerable distance into the lounge because of the physical layout. There was an awareness of this problem prior to February 3, 1978. Peter Booth was present and aware of the checks on 3 February and was in the hotel and advised of the checks on 17 February.

His explanation for the presence of minors on February 3 and 17th was that either they were let in as above or false or fraudulent identity documents were used. Mr. Booth pointed out that no person who had used such documents to get entry would produce them for police officers, for that action would be more serious than being found in the premises. Mr. Booth recited the events relative to a particular age check which resulted in his suffering from a criminal act.

The Tribunal finds that on 3rd February, 1978, 2 persons, and on 17th February, 1978, 3 persons under the age of eighteen years as hereinbefore set out, were upon the licensed premises, namely, Drawbridge Lounge (#2) of the licensee herein.

A further question to be determined is whether the licensee permitted this, and thereby was in breach of the relevant regulation.

[NOTE: The Tribunal referred to R.v. Royal Canadian Legion and Regina v. Action Tavern Ltd. as set out in re. Bidwell Investments Limited, Licensee - President Motor Hotel]

Did James Booth Enterprises Limited, the licensee herein, at all times through empowered personnel, do all that an ordinary prudent man would do in exercising reasonable diligence under the particular circumstances for carrying out the operation herein?

The management was aware generally and specifically of the possibility of the entry and presence of under age persons. There had been occasions when minors had been refused entry, occasions when they had to be evicted. It is clear that the Drawbridge Lounge was designed to, and did in fact, attract young persons. There must have been an awareness on the part of the licensee that a situation was being created where under age persons would be attracted. They must have been aware of the desire of young people to go along with their peers to engage in the conduct of their peer group. They should have known that minors would often and with tenacity and ingenuity try to enter the Drawbridge Lounge.

Accordingly, the diligence of the licensee would have to be constant and more intensified than in an ordinary situation. And in a major degree this was the case. The screening process was very complete. The setup of the vestibule and rope cordon; the use of a doorman and Peter Booth in checking and a hostess in double checking; the special reliance on age of majority cards and the strictness of alternative proof, indicate a realization of the seriousness of the matter and evidence that the licensee did not wish to cater to under age persons but did wish to comply with the regulation. The action with respect to eliminating the elevator as a means of entry was a prudent step.

However, the failure to take adequate and continuing action with respect to the fire door was imprudent. Management was aware of its potential use as an improper entry; indeed, management was aware of the exact process in fact used for such purpose, and was aware that continuing supervision from the vestibule was not possible visually. Some steps were taken to control entry but it is clear that adequate measures were not in effect at this point. The presence of the minors would indicate this. After the incident of 3 February, 1978 management should have been very conscious of the situation. Peter Booth was aware of the presence of the minors, had seen them, and should have reinforced whatever avenues he concluded had been used for entry by them. That minors were again in

the lounge on the 17th February confirms that the diligence was short of what was required.

It is not necessary for the Tribunal to determine whether or not the licensee should have stationed personnel at the fire door entry on a full time basis. Modern technology by way of alert signals might have provided the solution. Since the incident a sign has been put in in respect of the door, and more close checking is having a salutary effect. It is clear that prudence required that the fire door, which is a necessity, should be more adequately safeguarded against improper entry by under age persons.

The Tribunal finds that in respect to the fire door the licensee failed on the 3rd and 17th of February, 1978, to exercise reasonable diligence regarding the entry to the Drawbridge Lounge by minors.

Since the incidents the licensee has taken further action - only age of majority cards are accepted as proof of age, and signing is more visible. Whether these steps would have prevented the incidents is not known. However, they do reflect the desire of the licensee to eliminate further possibility of violation of the regulation.

Peter Booth's position was that the licensee stood on its good record of some 8 years of strict adherence to the regulations and that management practiced tight security procedures since inception of the hotel operation.

The Tribunal finds that the general operation of the hotel was of a high standard; however, there was not the diligence required in respect of minors in the Drawbridge lounge.

The Board has suspended the lounge licence, thereby affecting all areas of lounge service, i.e. the Lorde Nelson Lounge as well as the Drawbridge Lounge. There was no shortcoming in the operation of the former. It is completely separate and part of a first-class operation. The failure of the licensee in respect of the Drawbridge Lounge was not such as to call for punitive action generally. Accordingly, the Tribunal is of the opinion that the penalty should be restricted to the Drawbridge Lounge where the failure took place. The Tribunal sees no reason to change the duration of the penalty.

The Tribunal finds that the Licensee, James Booth Enterprises Limited, was in breach of a term and condition of its Lounge Licence in that, contrary to Section 5, subsection (5) of Regulation 1008/75 of the Liquor Licence Act, the Licensee did permit persons under the age of eighteen (18) years, namely, Thomas Elson, Patrick Michael Pitz,

Carmen Cecile Jarry, John Gravelle, and Carla E. Bussolaro to enter and to be on that part of the premises licensed as a 'lounge' as detailed herein.

THE LIQUOR LICENCE APPEAL TRIBUNAL hereby alters the decision of the Liquor Licence Board herein by changing the Order dated 25 July, 1978 of Suspension of the Lounge Licence herein, to an attachment of a term and condition of the the said Licence, that Room 1, Basement, North-west Section herein referred to as Drawbridge Lounge, be closed for the sale sale, service, and consumption of liquor for a period of seven days, to be set by the Liquor Licence Board, and the Tribunal hereby so orders.

CREST HOTEL, Thunder Bay

Lounge Licence
issued to
Petrick-Wiejak Crest Hotel Limited
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: R. E. ZELINSKI, Q.C, representing the Licensee
S. A. GRANNUM representing the Liquor Licence Board

DECISION: 24 November, 1978

Petrick-Wiejak Crest Hotel Limited is the Licensee (#010884) of the establishment classified as an hotel and known as Crest Hotel situate at 875 Red River Road in the City of Thunder Bay.

The licences issued in respect of Crest Hotel are as follows:

Dining Lounge Licence Serial #A3233 in respect of
2 rooms located:

1. Main Floor, South East Section
capacity 20
2. Main Floor, South Centre Section
capacity 66

Lounge Licence Serial #L0386 in respect of
2 rooms located:

1. Main Floor, North Centre Section
Lamplighter Room - capacity 88
2. Main Floor, West Section
Red River Room - capacity 235.

Petrick-Wiejak Crest Hotel Limited, with Walter Wiejak having 50% of the issued capital, purchased the assets of the Crest Hotel owned and operated in partnership by Messrs Petrick and Wiejak under a licence issued in June, 1961. In January, 1972, Walter Wiejak acquired all the shares.

The Crest Hotel is a 2-storey all brick building with 2 licensed lounge areas, 2 licensed dining areas, a coffee shop, and 21 rooms. There is a substantial parking lot adjacent to the hotel. The hotel premises were expanded in 1963 by adding a lounge area, Lounge 2, to the back of the original building. This lounge was extensively remodelled in 1975.

Access to Lounge #2 could, in 1977, be gained in a number of ways through various doorways - a main doorway (herein called G) in a foyer at the hotel west entrance (herein called A), an exit and entrance in a northwest corner (herein called #1), an exit in the southeast area (herein called 2), an opening (herein called F) at the south east corner to a corridor leading to an exit (herein called #3), and a door (herein called E) leading to Dining Lounge #2 which in turn made available access to Lounge #1 through 2 other openings (herein called C and D).

Access to Lounge #1 could be gained via main doorway in the above foyer from the main entrance through a fire door (herein called B) and through the Dining Lounge #2 with its doorways as set out above. In all there were a large number of scattered doorways which gave interconnection between the lounge areas to other internal areas and to the outside - a physical layout very difficult to monitor as to movement of persons.

After February, 1978, Exit #1 was discontinued as an entrance after 8:30 p.m. Exit #2 became an emergency exit only, and Exit #3 with a thumb latch on the outside was discontinued as an entrance after 8:30 p.m. Entrance B with a panic bar on the lounge side was locked from the main lobby after 8:30 p.m. Accordingly, after 8:30 all entrance to Lounges 1 and 2 is through the one entrance, "A".

For the past six years the hotel has been under the direct management of Mr. Wiejak, assisted by his wife, Victoria Wiejak. Mr. Wiejak exercises close personal supervision of the day-to-day operations of the hotel including hiring and supervision of staff, putting in extremely long hours on the job daily. The operating results have been more favourable than many other hotels in the Thunder Bay area.

The hotel enjoys popularity in the Thunder Bay area and is noted as a meeting place for students from Lakehead University and Confederation College. Many sports groups in the area gather at the hotel regularly and the hotel is noted for its sponsorship of various athletic groups. It is situated in an area of heavy residential accommodation. Clientele is basically a repetitive neighbourhood type - many in the ages from 20 to 35.

The lounges serve approximately 300 persons per day on week days and 400-500 on Fridays and Saturdays. The hotel serves approximately 2,000 people in the average week. The hotel employs an average of thirty full-time employees who have been employed for various terms up to 14 years, plus part-time help.

On the 5th of May, 1978 the Liquor Licence Board issued a Notice of Proposal to suspend for a period of fourteen (14) days the liquor licence(s) held in respect of Crest Hotel for the following reasons:

"3. On or about the 5th of February, 1977 at 10:15 p.m. there were present on that part of the premises licensed as a lounge and known as the Red River Room, persons under the age of eighteen years, namely, John Lennox, born 8/9/59 and Michael E. Greaves, born 8/12/59. The said persons were consuming beer which had been sold and served to them by an employee of the licence holder.

4. On or about the 11th of September, 1977, between midnight and 1:00 a.m., there were present on the licensed lounge premises known as the Lamplighter Room, certain persons who were under the age of eighteen years, namely, Mark Edward Anderson, born 9/3/60, Karl Thomas Dahl, born 11/12/60 and Thomas Reid Gerow, born 8/3/60. The said persons were seated in front of the bar and the manager of the licensed premises was at the time working behind the bar and saw or ought to have seen the said persons.

5. On or about the 25th of February, 1978, at 11:20 p.m. there was present on the licensed lounge premises persons under the age of eighteen years, namely Jean Claude Dumas born 7/5/61 and two other persons born 6/5/62 and 4/8/62. As they are juveniles, their names cannot be revealed. All of the said persons were consuming beer which had been sold and supplied to them by a waiter, one Patrick Doyle.

6. The licensee corporation has, by its officers and employees, carried on activities that are contrary to Section 45(1) of the Act and Section 5(5) of Regulation 1008/75 under the said Act. Further, the licensee has failed to ensure that the licensed premises are managed and supervised by an experienced person capable of managing an orderly and efficient operation".

After a hearing on June 15, 1978, to consider its proposal, the Liquor Licence Board issued its decision:

"....that the Licensee has, by its officers and employees, carried on activities that are contrary to the Liquor Licence Act, 1975, and, in particular, Section 45(1) of the said Act and Section 5(5) of Regulation 1008/75 under the Liquor Licence Act, 1975".

and

"that the 'Lounge' Licence only issued to Petrick-Wiejak Crest Hotel Limited in respect of the Crest Hotel, be "SUSPENDED" effective at the opening hour on Tuesday, July 4th, 1978, and to remain suspended until the opening

hour on Wednesday, July 12th, 1978".

The licences are subject to certain terms and conditions set out in Regulation 1008/75 including:

"5(5) Subject to Section 46, no holder of a licence shall permit any person under, or apparently under, the age of eighteen years to enter or be upon the licensed premises".

At the Board hearing there were filed certificates of conviction in respect of the above named persons for offences contrary to Section 45(4) of the Liquor Licence Act which provides:

"no person under the age of eighteen years shall enter or remain on premises in which the sale of liquor is authorized except those classes of premises that are prescribed by the Regulations".

Section 45(1) of the Liquor Licence Act, 1975 provides

"No person shall knowingly sell or supply liquor to a person under the age of eighteen years".

Sgt. Donald McSween, 15 years with the Thunder Bay Police Force, testified as to visits to the Crest Hotel with which he was familiar.

On 5 February, 1977 at about 10:15 he attended with another officer to check in the Lamplighter Room and the Red River Room. At a table in the Red River Room sat Michael B. Greaves, born 8/12/59 and John Lennox born 8/9/59. They produced no identification. Though each minor had a glass and a bottle of beer in front of him, the Sgt. did not witness either service or consumption. The room was busy as generally. The two minors were charged with a breach of Section 45(4) of the Liquor Licence Act, subsequently pleaded guilty thereto, and were convicted. At the time, the Sgt. spoke to a waiter who was serving and warned him to check I.D.'s more closely in the future. He was of the belief that he contacted management.

On 11 September, 1977, at about 12:40 a.m. he attended Crest Hotel with another officer and entered the Lamplighter room. At a table were Mark Edward Anderson, born 9/3/60, Karl Thomas Dahl, born 11/12/60, and Thomas Reid Gerow born 8/3/60. The table was a front one nearest the bar. Mr. W. Wiejak was behind the bar. The minors were charged with a breach of Section 45(4) of the Liquor Licence Act, subsequently pleaded guilty thereto, and were convicted. At the time, the Sgt. had a discussion with Mr. Wiejak and the waitress. He cautioned them about checking ages, to use Age

of Majority Cards, and if there was no card to ask for 3 forms of identification. It was not an overly busy time. . He had not seen actual drinking.

On the 25th of February, 1978, at about 11:20 p.m. he attended the Crest Hotel with another officer to check both bars. In the Red River Room at a table were Jean Claude Dumas born 7/5/61 and 2 juveniles under 16 years of age. Each was charged under 45(4) of the Liquor Licence Act. Subsequently each pleaded guilty thereto and were convicted.

A charge under the Liquor Licence Act was laid against the waiter, Patrick Doyle. Sgt. MacSween spoke to Mr. Wiejak who approached him outside the hotel, and warned him about juveniles coming in to the bar and that he should put in some sort of security system. The minors and juveniles had been dressed in jeans and jackets as young persons generally dress. In none of the incidents were charges laid against the hotel.

Sgt. MacSween stated that there was absolutely no control. In the three years he had been checking he could not recall any satisfactory security. He was of the opinion that there were too many entrances and exits for a person to handle.

Robert A. Moore, an inspector with the Liquor Licence Board since 1954, testified as to the general operations of the hotel. He had visited the hotel 39 times in 1977 and had general discussions with Mr. and Mrs. Wiejak. He made reference to minors and on several occasions had referred to Age of Majority cards, saying that they were "the only practical protection they had". On April 12, 1977, he had a discussion with Mr. Wiejak about the specific incident, telling him he could be in trouble - it was in the nature of a warning and advice. On April 27th, 1977, he advised that "any further occurrence could possibly lead to a suspension".

There were no other specific incidents respecting minors about which he had discussions with Mr. Wiejak. If there had been a specific problem earlier he would have brought it to Mr. Wiejak's attention. He had been asked by Mr. Wiejak to assist him in finding suitable doormen. He was of the opinion that Mr. and Mrs. Wiejak were honest people, manifested integrity; he would be prepared to recommend the issuance of a licence to them.

He was of the opinion that present staff were quite reliable but part-time staff engaged in the evenings were not as careful. Mr. Wiejak had been cooperative; for example, when the inspector pointed out the difficulty that certain entertainment could produce, entertainment was terminated. Mr. Wiejak had also given out Age of Majority applications supplied by Inspector Moore.

Mr. Wiejak testified that he knew nothing of the incident of February 5th, 1977 and could not recall any discussion with Sgt. MacSween on Sept. 11th, 1977. With respect to the incident of 25th February, 1978 he had fired Patrick Doyle - the waiter who had served the minors - on the spot for breaking a house rule.

Mr. Wiejak testified that there were house instructions that if there was any doubt as to the age of a person, the employee was not to serve. Prior to February, 1978, the checking as to the presence of minors was done by the bartender or employee on the floor. From time to time there was an employee designated as a bouncer, but no satisfactory person could be found. He acknowledged that he was aware in 1977 that under aged persons had entered the premises.

Now there was almost exclusive reliance on the Age of Majority cards. Since the Notice of Proposal there is an Age of Majority sign by the bar. Signs at the entrance had been ripped up. Door security had been now obtained by removing hardware, by locking doors at certain times to prevent entry from the outside and by periodic rounds of checking. The most significant new measure was the engaging of a professional security service to do the checking at the one entrance which is now used for access to both lounges through the common foyer. The checking by uniformed personnel has brought about great improvement in the security generally and with respect to underaged persons.

Mr. Ronald Heale, a chartered accountant who visited the Crest Hotel many times to view the operation, testified favourably with respect to the operation and as to the management, and that operation, in his estimation, was carried on in accordance with the law.

Exilda Cormier, employed as a waitress, testified that Mr. Wiejak had daily instructed staff not to serve minors, and she had carried out instructions. If among a number at a table one looked under age, she would not serve anyone at that table till the young looking person had been asked to leave and had done so. This was her recollection of the incident of September 11, 1977.

Mr. Garry Goodlad testified as to the services of Apex Security Service which supplies specialized security services to hotels, the essence of which is the general supervision of entrance areas with emphasis on checking I.D.'s of persons wishing to enter.

Mr. Grant Beasley, a chartered accountant who looks after the accounts of several licensed premises, testified favourably as to the efficient operation and close supervision given in Crest Hotel and as to the personal character of the

management. He stated that there had been a very negative effect on the business by the action of the Board and that a suspension of 1 week would bring about \$7,000 loss.

The Tribunal finds that on the 5th of February, 1977, on the 11th of September, 1977, and on the 25th of February, 1978, certain persons under the age of 18 years as set out in the Notice of Proposal, entered and were upon certain of the licensed premises of the licensee, namely, the areas known as Lounges 1 and 2 - Lamplighter Room and Red River Room.

The further question to be determined is whether the licensee permitted the same contrary to Regulation 1008/75 Section 5 Subsection (5).

[NOTE: The Tribunal referred to R.v. Royal Canadian Legion and Regina v. Action Tavern Ltd. as set out in re. Bidwell Investments Limited, Licensee - President Motor Hotel].

Did the licensee herein, Petrick-Wiejak Crest Hotel Limited at all times through empowered personnel, do all that which an ordinary prudent man would do in exercising reasonable diligence under the particular circumstances with respect to preventing the entry and presence of minors and so insure that the act prohibited in Section 5 Subsection (5) did not occur?

Mr. Wiejak, who carries the responsibility on behalf of the licensee had a general awareness of the entry of minors. It is obvious that the neighbourhood atmosphere of the hotel would be attractive to under age persons. He knew or should have known the shortcomings of the part-time staff. Mr. Wiejak knew or ought to have readily known of the difficulty presented by the myriad methods of entry to the lounge areas. He had attempted to find personnel to do checking and supervision but it would appear that having been unsuccessful, he had given up. It is especially significant that he had been advised and warned in September, 1977. This should have prompted him to review control measures and to ensure no re-occurrence.

It is clear that action taken by the licensee to prevent the entry and presence of minors in the premises licensed as a lounge, fell far short of what was necessary and what an ordinary prudent man would do in exercising reasonable diligence in this regard; indeed, there was significant inaction in this aspect of the operation.

There is no question but that the licensee ran an efficient operation which served the clientele well. There is no doubt as to the integrity and honesty of the management.

However, there was clear failure on the part of management to insure that the prohibition set out in Regulation 1008/75 5(5) was complied with.

The Tribunal finds that the licensee, Petrick-Wiejak Crest Hotel Limited, was in breach of a term and condition of its lounge licence in that, contrary to Section 5, Subsection (5) of Regulation 1008/75 of the Liquor Licence Act, the Licensee did permit persons under the age of eighteen (18) years, namely, John Lennox, Michael B. Greaves, Mark Edward Anderson, Karl Thomas Dahl, Thomas Reid Gerow, and Jean Claude Dumas, and two unnamed juveniles, to enter and to be on that part of the premises licensed as a 'lounge' as detailed herein.

THE LIQUOR LICENCE APPEAL TRIBUNAL hereby confirms the decision of the Liquor Licence Board herein dated 15 June, 1978 of Suspension of the Lounge Licence herein for a period of seven days, and the Tribunal hereby directs the Board to set the commencement and termination of the said period.

FITZ'S RESTAURANT AND TAVERN, Toronto

Application for a Dining Lounge Licence
by
Dr. Dwight Foster and Mr. Fitzgerald Riley
APPEAL FROM REFUSAL TO ISSUE

TRIBUNAL: JOHN W. ERICKSON, ACTING CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: MILTON J. BERNSTEIN representing the applicants
S. A. GRANNUM representing the Liquor Licence Board

DECISION: 6 December, 1978

This matter came on for appeal before the Tribunal on the 31st day of October, A.D. 1978. It was noted at the outset that the original application was for the transfer or relocation of a dining lounge licence being No. 091727 issued to Soul Palace Tavern from 320 Yonge Street to premises situate at 19 St. Joseph Street in the City of Toronto. It was also noted that the name of the applicant was changed from Soul Palace Tavern to Fitz's Restaurant and Tavern in accordance with the terms of a letter filed with the Liquor Licence Board of Ontario on May 12th, 1978. At the beginning of the hearing Counsel for the Board and the applicant agreed that the matter should be treated as a new application. The Tribunal noted the public interest in the application and pursuant to the provisions of the Statutory Powers Procedure Act was of the opinion that the parties were so numerous that it would be more appropriate to cause reasonable notice of the hearing to be placed in a newspaper having widespread circulation in the area in question. Copies of the newspaper advertisements were filed as exhibits at the beginning of the proceedings.

In order to appreciate the comments of most of the witnesses, it was necessary to hear evidence concerning the operation of the Soul Palace Tavern at 320 Yonge Street, in the City of Toronto and to hear the evidence of one, Fitzgerald Riley who proposes to operate a restaurant at 19 St. Joseph Street. It appears to be uncontradicted that Soul Palace Tavern was located in the vicinity of Dundas and Yonge Streets in the City of Toronto in an area which had acquired a great deal of notoriety given the type of individual who frequented that particular part of the City and the level of criminal activity. Evidence was called by Counsel for the Liquor Licence Board from officers of the Metropolitan Police Department who indicated that in their view the Soul Palace Tavern while it was being operated on Yonge Street was one of

the major trouble areas for the City Police and in fact it seems to be the consensus that it may well have been the worst problem spot for the morality squad. It is interesting to note that notwithstanding these comments from the police, there does not appear to have been any action taken by the Liquor Licence Board and in fact most arrests which did take place took place out on the street and not in the licensed premises. It also is uncontradicted that Fitzgerald Riley acquired a 5% interest in Soul Palace Tavern during the last year of its operation and it was his evidence that he attempted to introduce some changes into the operation of the tavern but because of his minority interest was unable to have his way and was overruled by his partners. The Tribunal did ask Mr. Riley why he would become involved in an operation such as the Soul Palace Tavern given its reputation and Mr. Riley's response was that he had hoped he could effect some changes which would improve its image. A question lingers in the minds of the Members of the Tribunal as to why Mr. Riley would even consider an investment in this type of an establishment. The evidence also revealed that a squabble developed between the landlord and the tenant Soul Palace Tavern to the extent that Soul Palace Tavern went out of business.

The Liquor Licence Board heard the application and came to the conclusion on the basis of Section 6(1)(g) of the Liquor Licence Act that in fact the granting of the licence to the new establishment on 19 St. Joseph Street was not in the public interest and was not in accord with the needs and wishes of the people of the community in which it was located. At the hearing before the Board and during the course of the hearing before the Tribunal, a great deal of evidence was introduced consisting of signatures from those who opposed the issuance of a licence and those who supported it. The Tribunal has reviewed this evidence in detail together with the evidence of the members of the Metropolitan Police Department, the evidence of Alderman Allan Sparrow of the City of Toronto and the evidence of Fitzgerald Riley who told the Tribunal about his background in the food industry.

Section 6(1)(g) of the Liquor Licence Act reads as follows:

"(g) in the case of an application for a licence, the issuance of the licence is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located."

The Tribunal has had occasion in the past to review the requirements of Section 6(1)(g). Counsel for the applicant cited the decision of Leaside Restaurant (see summary of decisions Liquor Licence Appeal Tribunal Volume 1,

Page 1) as support for his contention that the licence should issue. Counsel for the applicant cited the decision as an answer to the fact that Council for the City of Toronto had passed a resolution calling upon the Liquor Licence Board of Ontario not to issue any further dining lounge licenses in the area in question where Mr. Riley proposes to carry on business. In the Leaside case there also was a resolution of Council which dealt with the problems of parking. It is the view of the Tribunal that the Leaside case dealt with the issue of public interest from the standpoint of available parking facilities and not from the viewpoint of whether or not there should be any licences issued. In the Leaside Tavern case, the major issue to be determined was whether or not there was adequate parking in the area and not whether or not there should be additional licences issued in the area. It is the view of the Tribunal that the Leaside Tavern case does not afford the Tribunal any guidance with respect to this factual situation and that is distinguishable on its own facts.

In arriving at a decision in the matter before it in this appeal, the Tribunal reduced the major issues to two, which are as follows:

- (i) The operation of the Soul Palace Tavern on Yonge Street and whether or not it was reasonable to assume that the new premises at 19 St. Joseph Street would attract the same undesirable elements;
- and
- (ii) If the needs and wishes of the community were such that additional licences should not issue in any event.

In dealing with the first issue, it is necessary to look to the evidence of Mr. Riley and those called upon to support him at the hearing. It appears that Mr. Riley is 49 years of age and came to Canada in 1964. He previously held positions as a salesman at Eatons, as a salesman with the National Life Insurance and managed Club Jamaica which was a club specifically set up for West Indians who had come to this country and was a meeting place for them and a place where they could obtain guidance and advice with respect to employment and other important matters. It was Mr. Riley's evidence that he wishes to open a restaurant which will specialize in West Indian food and will in fact be a specialty restaurant. He stated that he knows of no other place that serves Jamaican type food such as he is proposing although there are other establishments which do hold themselves out as catering to those who wish to dine in a West Indian atmosphere on West Indian food. Mr. Riley pointed out that when he did operate the Club Jamaica he was allowed special occasion permits on occasions and from time to time catered for the Metropolitan Police Association. He testified that he had decided that it was impossible for him to change the character of the Soul Palace Tavern and for that reason was searching

for an establishment where he could set up his own business. He agreed in his evidence that the Soul Palace Tavern was in fact a hopeless situation and did not appear to contradict any of the evidence which was introduced by the police officers in question. Mr. Riley relied on certain correspondence from the Liquor Licence Board and obtained a building permit from the City of Toronto and commenced construction of his new restaurant notwithstanding the fact that he was specifically warned that the terms and provisions of the Liquor Licence Act had to be complied with which includes among other things public notice of the hearing. It is clear that a substantial amount of money has been expended by Mr. Riley and his partners although the evidence does indicate that most of the cash money that has been advanced to date was from Dr. Dwight Foster and not from Mr. Riley. It appears from the evidence that Mr. Riley's major contribution to the restaurant operation is equipment which he has purchased from time to time. There was an attempt by Counsel for the applicant to indicate that if necessary Dr. Dwight Foster would withdraw from the operation of the applicant if his continued involvement was prejudicial to the granting of the licence.

It is the view of the Tribunal that the application must be dealt with as presented to the Liquor Licence Board and the Tribunal and that the withdrawal of Dr. Foster if anything lends credibility to the position of the Board and to the position of the local police department since it is capable of an inference that Dr. Foster having been a major shareholder in the Soul Palace Tavern at 320 Yonge Street would be inclined to operate the business at 19 St. Joseph Street in a similar fashion. His withdrawal in the opinion of the Tribunal would also lead to further considerations as to whether or not Fitzgerald Riley, who would be the remaining partner, would have the necessary financial resources to carry on the operation. The Tribunal has some doubt that he would and that it would be necessary for Dr. Foster to remain as a secured creditor no matter what Mr. Riley ultimately decided to do. The Tribunal does not feel it is necessary to deal with the financial aspect of the application since our decision will rest on other grounds but wished to note its concern if Dr. Foster did withdraw.

The Tribunal is of the view that Fitzgerald Riley and the applicants have failed to dispel the strong inference that the new premises at 19 St. Joseph Street will create additional problems for the residents of that area. The Tribunal, of course, has no authority or jurisdiction to deal with the operation of the restaurant per se and confines its comments to the granting or non-granting of a liquor licence.

The second issue which concerned the Tribunal was whether or not the needs and wishes of the community required an additional licensed establishment and whether or not the licence was in the public interest. It is the view of the Tribunal that the resolution of Toronto City Council and the evidence of members of the Toronto City Police Department are only some of the factors that should be considered when determining public interest. It is obvious that to allow the Toronto City Council to dictate to the Liquor Licence Board of Ontario would be tantamount to allowing that Council to legislate in matters involving the sale and consumption of liquor in the City of Toronto. The Tribunal, however, does find that sufficient weight should be accorded to the views of City Council and to the views of Alderman Sparrow who gave evidence at the hearing. This evidence was supported by concerns of representatives of the Metropolitan Police Department and the evidence as a whole was not seriously challenged by the applicants. Additionally, it is obvious that it is not sufficient for public interest to be determined simply on a head count by comparing petitions for and against the application. The Tribunal finds that on balance, the weight of the evidence adduced in opposition to the granting of a licence to the applicants is more impressive and on that basis finds that the application of Fitzgerald Riley and Dr. Dwight Foster is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located.

An order will therefore go confirming the order of the Liquor Licence Board of Ontario dated July 27th, 1978.

SHORTT'S RESTAURANT, Toronto

Approval for issuance of Patio Licence
to
Blue Fox Tavern Limited
APPEAL FROM APPROVAL FOR ISSUANCE

TRIBUNAL: JOHN W. ERICKSON, ACTING CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: S. A. GRANNUM representing the Liquor Licence Board
AGENT: DR. J. S. SHORTT representing the licensee
APPELLANT. RUSSELL PYSKLYWEC in person

DECISION: 6 December, 1978

The appellant in this particular application to the Tribunal was a Mr. Russell Pysklywec among others. At the outset the Tribunal had to determine whether or not Mr. Pysklywec had status to bring the appeal and it was the Tribunal's view on a proper reading of Section 13 that in fact Mr. Pysklywec was a party to the proceedings before the Board and had status to appeal the Board's decision. The Tribunal for the purposes of the record also indicated that it had directed the Registrar to cause publication of a notice of hearing to be made in a local newspaper given the nature of the opposition to the application and since it was the opinion that the parties were so numerous personal service would be unsatisfactory and an advertisement in the local newspaper would be desirable.

Shortt's Tavern is owned by a consortium of individuals with Dr. James D. Shortt as President. Dr. Shortt appeared on behalf of the applicant to give evidence. Evidence was presented to the Tribunal which indicated that prior to the conversion of the premises in which the restaurant is located a garage existed and that substantial funds were expended to renovate the premises and upgrade the grounds. In addition, photographs were introduced into evidence which showed the garage as it existed prior to the renovations and the Tribunal is of the view that the renovations have in fact added to the area aesthetically. It was the evidence of the Liquor Licence Inspector, Mr. Edward Chalmers, that Shortt's runs a good operation and appeared to be diligent with respect to compliance with the Liquor Licence Act and co-operated in dealing with problems which arose from time to time. There was evidence that there were some management problems initially but that they had been resolved satisfactorily in the opinion of the inspector. Photographs were introduced showing the location of the patios which are the subject matter of

this application and it is the opinion of the Tribunal that the patios which are proposed by the applicants do not constitute a blight or an eyesore on the general area and in fact appear to be well planned and located. There were originally some complaints about the food/liquor ratio however all parties agreed before the Tribunal that this is no longer an issue.

Dr. Shortt when giving his evidence indicated that he had agreed to restricted hours for the patio operation from 12:00 noon to 9:00 p.m. on his own volition and had no intention of operating the patio after that time. Additionally it is noteworthy that the patio would only operate on a seasonal basis which would obviously restrict its operations. This is quite important in the view of the Tribunal since a majority of the complaints which were placed before the Tribunal at the hearing dealt with problems occurring after 9:00 p.m. and more particularly with problems after midnight. The Tribunal was presented with petition evidence for and against the patio licences and as in other situations involving signatures and more particularly petitions the Tribunal is of the view it is impossible to decide this issue simply on a head count but that it must look to the needs and wishes of the community at large to decide if the granting of a licence is in the public interest. Evidence was called by those objecting to the granting of licence by Russell Pysklywec and the Tribunal heard from a Geraldine Fry, Violet Tomlinson, and Dr. Testaferri. All of these individuals testified in a forthright manner and indicated their concerns for their neighbourhood. The Tribunal is satisfied that all of the concerns which were expressed by those objecting to the licence are genuine and that the individuals who did appear at the hearing have a real concern for their neighbourhood. One thing that was apparent to the Tribunal is that the complaints and the concerns which were expressed in opposition to the granting of the licence appear to be related to the actual operation of Shortt's Restaurant per se and not to the operation of the patios on a restricted basis. In other words, the evidence which was introduced in opposition appeared to go to the question of whether or not Shortt's should have a liquor licence at all rather than whether or not there should be a patio licence issued. It is the view of this Tribunal that the subject matter of this appeal has nothing whatsoever to do with the original granting of a dining lounge licence to Shortt's but must be confined simply to the question of the patio licences. Those in opposition to the licence did indicate their concern for their neighbourhood and felt that since Shortt's came into existence vandalism and other types of unruly conduct had increased. It is noteworthy that most of the complaints dealt with individuals and problems which occurred after midnight and in many situations it is the Tribunal's view that it would be unfair and impossible to suggest that the individuals in question were customers of Shortt's Restaurant since there are other licensed establish-

ments in the area.

The applicant for the patio licence satisfied the Board that the patio on a seasonal basis is something to be desired by the residents of the area and the public generally and that it was not contrary to the public interest or the needs and wishes of the community. It is the view of the Tribunal on the basis of all of the evidence which was adduced by those for and against the licence that no cogent evidence has been introduced to show that the Board erred or that the granting of the patio licences are not in the public interest and against the needs and wishes of the community. The Tribunal has made that finding on the basis that most of the evidence in opposition deals with matters which are extraneous to the matter before the Tribunal.

An order will therefore go affirming the decision of the Liquor Licence Board.

CROMWELL'S TAVERN, Oakville

Dining Lounge Licence
issued to

Conjo Limited

APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: M.E. WEIR, Q.C. representing the Licensee
S. A. GRANNUM representing the Liquor Licence Board

DECISION: 1 December, 1978

Conjo Limited is the licensee (#090647) of the premises classified as a tavern known as Cromwell's Tavern located at 2273 Royal Windsor Drive, Oakville.

The licences issued are as follows:

Dining Lounge Licence Serial #A1798
in respect of 2 rooms located

1. Main Floor: West Centre Section
capacity 111

2. Main Floor: East Centre Section
capacity 40

Patio Licence Serial #16806
adjoining the above Dining Lounge areas
and being located

Main Floor: South East Section
Outdoor area
capacity 142.

The management of the operation is provided by its President, Mrs. Joan M. Schmidt and her husband Conrad Schmidt.

On the 15th of September, 1977, the Liquor Licence Board issued a proposal to attach a

"TERM AND CONDITION that the sale and service of liquor in the establishment shall cease at 10:00 p.m., or such other term and conditions as the Board sees fit.

FOR THE FOLLOWING REASONS:

The licensee is carrying on activities that are in contravention of Section 6 Subsection (5) of Regulation 1008/75 under The Liquor Licence Act, 1975 and in particular, the total receipts from the sale of food in each month during the period commencing July 1st, 1976 to July 31st, 1977."

Section 6(5) (a) of the said Regulation states:

"the total receipts from the sale of liquor in any month shall not exceed the total receipts from the sale of food in the same month".

On the 26th of January, 1978 the Board held a hearing to consider the Proposal and reserved its decision pending a review of the food/liquor sales after April, 1978.

After a hearing on the 15th of August, 1978, the Board issued its decision that

"effective MONDAY, OCTOBER 2ND, 1978, it will be a "TERM and CONDITION" of this Licence that the sale of alcohol beverages shall CEASE at 10:00 p.m. until such time as the Regulations are satisfied."

The Board had before it figures relating to total receipts from the sale of liquor and total receipts from the sale of food as filed by the Licensee for the period from the commencement of its operation in July, 1976 to July, 1978.

The figures filed show that the total receipts from the sale of liquor which at the commencement of the operation by the licensee, were 89% of the total, were reduced continuously in the intervening months to 51%. The total receipts from liquor for the most recent month of October was also 51% of the total.

The Tribunal is of the opinion that the Board, on the basis of the figures filed, was empowered under the Liquor Licence Act to attach the condition as set out in its decision

In response to questioning by the Tribunal, Mrs. Schmidt testified that during all of the said period, Ontario Retail Sales Tax was included in the figures set out as being receipts from sales. The Liquor Licence Board does not interpret the relevant section as requiring this inclusion and has accepted figures exclusive of sales tax.

Management was not aware of the foregoing interpretation; the Board was not aware of the inclusion of sales tax. Since the food sales are such that little sales tax, if any, is payable in respect thereof, and since the sales tax on

liquor sales is substantial its inclusion in the receipts from the sale of liquor could constitute a significant factor in the computation of the relationship of receipts from food sales to receipts from liquor sales.

The figures filed would appear to be 110% of the total sales from the sale of liquor. The appropriate figures required to be filed in respect of the receipts from liquor sales should have been less. Though the amount in dollars is not great, the amount can be significant for the inflated figures are apt to lead to the invalid conclusion that receipts from the sale of liquor exceed the receipts from the sale of food, since the margin between the two has been narrowed close to an even balance. Indeed, it would appear that compliance in fact has been had in 6 of the past 9 months if proper figures had been filed.

The Tribunal noted that the Board in its decision stated:

"For your information, however, if evidence satisfactory to the Board becomes available on or before that date indicating conformity to the Regulations, then this "DECISION" will be reconsidered at that time."

It would appear that an examination of the sales tax inclusion might have produced 'evidence satisfactory to the Board....indicating conformity to the Regulation.'

Since the figures considered by the Board are not the figures required in accordance with the said section, the Tribunal is of the opinion that the matter should be reconsidered by the Board.

Accordingly, the Liquor Licence Appeal Tribunal hereby directs the Liquor Licence Board to review in February, 1979, the operations of the licensee for the months of November, December, 1978 and January, 1979 with respect to determining whether there has been compliance with Section 6 (5) of Ontario Regulation 1008/75 based on proper figures to be filed in accordance with the section by the licensee for the said months.

WILLIAM J'S TAVERN, St. Catharines

Dining Lounge Licence
issued to

J. Batcules & Sons Limited

APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM, and
BARBARA J. SHAND, MEMBERS

COUNSEL: WM. J. GULLETT representing the Licensee
S. A. GRANNUM representing the Liquor Licence Board

DECISION: 12 December, 1978

William J. Batcules & Sons Limited is the licensee (#090456) of the establishment classified as a tavern known as William J's Tavern located at 249 St. Paul Street, St. Catharines

The licence issued is as follows:

Dining Lounge Licence Serial #A1387
in respect of a room located
Main Floor: Centre Section
capacity 96.

Terms and conditions of the licence are set out in Ontario Regulation 1008/75, including the following relevant provision

Section 6

(5) In each premises for which a dining room or dining lounge licence is issued,

(a) the total receipts from the sale of liquor in any month shall not exceed the total receipts from the sale of food in the same month;

On the 26th day of July, 1978, the Liquor Licence Board issued a Proposal

"to attach to the dining lounge licence for the above-named establishment a TERM and CONDITION that the sale and service of liquor in the establishment shall cease at 10:00 p.m.

FOR THE FOLLOWING REASONS:

The licensee is carrying on activities that are in contravention of Section 6 subsection (5) of Regulation 1008/75 under The Liquor Licence Act, 1975 and in particular, the total receipts from the sale of liquor in the dining lounge have exceeded the total receipts from the sale of food in each month during the period commencing January, 1977 and ending June, 1978."

The licence holder has filed with the Board a statement of gross sales of food and liquor as follows:

<u>Month & Year</u>	<u>Food Receipts</u>	<u>%</u>	<u>Liquor Receipts</u>	<u>%</u>
Jan. to Mar./77	19,916.38	54	17,229.34	46
Apr to June/77	27,477.79	46	33,019.61	54
July to Sept./77	21,721.33	42	31,681.77	58
Oct. to Dec./77	15,408.32	42	23,429.41	58
Jan. 1978	4,065.03	44	5,223.16	56
Feb. 1978	4,944.33	46	5,809.58	54
Mar. 1978	5,472.97	46	6,464.25	54

Additional figures with respect to gross sales of food and liquor before the Board were as follows:

April, 1978	4,984.98	45	6,177.98	55
May, 1978	5,608.13	40	8,401.29	60
June, 1978	5,102.23	39	9,850.55	61
July, 1978	6,776.91	45	8,352.23	55

After a hearing on the 17th day of August, 1978, the Board found that

"the total receipts from the sale of liquor in these premises have consistently exceeded the total receipts from the sale of food, contrary to Section 6, Subsection (5)(a) of Regulation 1008/75 under The Liquor Licence Act, 1975"

and that there had been a contravention of the Regulation, and attached a condition to the Dining Lounge Licence that

"commencing Tuesday, September 5th, 1978...the sale of alcoholic beverages in the 'Dining Lounge' of William J's Tavern shall CEASE at 11:00 p.m. daily, subject to a review at the end of the three month period ensuing".

Additional figures placed before the Tribunal were:

August, 1978	7,627.06	47	8,488.83	53
September, 1978	7,449.00	48	7,933.75	52
October, 1978	6,604.74	49	6,973.33	51
November, 1978	6,092.09	52	5,819.77	48

The licensed premises was first acquired by the Batcules family in 1918 and was run by the father, William Batcules, first as a soda bar and later as a restaurant, until his death in 1962.

A corporation was since formed but the subject property is still controlled by the Batcules family. For the past 35 years it has been managed by Fred Batcules, and he continues to do so. A liquor licence was first obtained in 1966 when the premises were remodelled and renovated.

It has been a top dining lounge in the City of St. Catharines, with a senior type of clientele.

The premises are located in the downtown St. Paul's area of St. Catharines which was at one time the main shopping area in the community.

The street on which the property is located became a one-way thoroughfare and this change greatly reduced the volume of the business done by the restaurant, as it became inconvenient for passing traffic to stop and park near the premises. This removed transient trade and in particular, American tourists, for the traffic change became a bypass.

Through the years the tavern has prospered and suffered economically just as the downtown core of the city has generally. As new plazas were developed, business shifted away from the downtown area. During the past decade stores became bankrupt; many premises became vacant. Two large chain stores moved. Only a few variety shops remained. Potential customers from shoppers were accordingly removed. The negative situation was compounded because the general population did not increase, but decreased.

In recent years the downtown businessmen through appropriate associations in conjunction with the municipality have embarked on a rehabilitation program for the downtown area and the program is in the process of becoming a reality. New developments are scheduled within 2 or 3 blocks of the premises buildings with retail stores are planned in the vicinity, a new bus depot for local and inter-urban transport is being proposed. The re-development and rehabilitation is being done in conjunction with the municipal and provincial programs. It appears that the exodus is about to be reversed, and a revitalization of the St. Paul's area is to take place. The difficulty is and will continue to be the need to attempt to attract people back to the downtown city core area in the meantime for dining, and this will take time to accomplish.

In order to increase general sales volume by attracting more people back down to the city core area, it was decided to cater to the evening entertainment business which the owner of William J's identified as being the most promising new clientele available. It was hoped that once the business was revitalized that some of the clientele could be coaxed into returning to the downtown core to dine prior to visiting one of the local theatres.

Accordingly, the premises were changed and up-graded into a restaurant-tavern operation in February of 1977 with an appropriate piano music entertainment to attract the late dinner crowd. The hours of operation were changed from 8 a.m. to 1 a.m. to 12 p.m. to 1 a.m. The new approach was initially successful.

However, food receipts percentages decreased, and in March, 1978 the Board called the management in for discussion. Mr. Batcules interpreted the discussion not as a warning of action by the Board for failure, but as an instruction to exert efforts to meet the balance. Management intensified efforts which had been generally instituted even earlier, for they had made attempts to have the operation continue as a viable dining operation through the years - no matter what changes had taken place in the environs.

The management introduced menu changes, specials at lunch time, 'after hours' snacks, advertised special promotions in the newspaper, stressed to staff to promote the consumption of food. The dining lounge is 90% filled with tables and chairs; food can be had at the bar, though patrons are usually directed to tables when a request is made. Measures for even later food service are being instituted. In the words of the Inspector Malkiewicz, an inspector with the Liquor Licence Board for 6½ years "Mr. Batcules has done everything in his power to maintain the food balance". Discussions have been had with the inspector by Mr. Batcules and suggestions made have been followed to that end. It was not feasible to attempt to operate during breakfast hours because it was evident that there would be no patrons for that service.

Actions taken have resulted in the dining lounge continuing as an eating place. There is always someone in the kitchen, with 1 or 2 persons being there between 10 and 11 p.m. The inspector has noted in late evening visits that patrons were eating. Inspector Malkiewicz's general assessment of the operation was very favourable.

In respect of compliance with Section 6(5)(a) of Regulation 1008/75 of the Liquor Licence Act, 1975, it would appear that the Board continues to take the position that it has no discretion and that it had to take regulatory action

once proceedings had commenced, and that the regulation does not provide for exceptions. The Tribunal continues to take the position that the Board has discretion. The Tribunal stated in the Diplomat hearing (1 L.L.A.T. Page 31 at Page 34)

"We cannot find that the Legislature intended to be rigid regarding the opportunity to a licensee to comply with the section. If it were so, the directions to the Board respecting its action as the consequence of a failure to meet Sec. 6(5)(a) would have been to bring about an automatic result."

The Tribunal is of the opinion that relevant criteria should be used as a basis if the exercise of discretion is to be in favour of the licensee. They are:

1. The operation by the licensee is a bona fide restaurant (food) operation
2. Reasonable efforts are being made by the licensee to meet the requirement of the regulation
3. Reasonable success toward the goal of meeting the requirements in a reasonable period of time is being had.

There must, of course, be compliance in due course.

In respect of the operation of William J's Tavern the facts as found by the Tribunal show clearly

1. It is a bona fide restaurant - the menu, the facilities, the service, all indicate this.
2. More than reasonable efforts and innovations are being made.
3. Success in increasing receipts from the sale of food is being had, namely, increasing from a low of 39% in June, 1978 gradually upward to 52% in November, 1978.

In the present situation there is one additional factor worthy of consideration. The operation has been seriously and negatively affected by the economic decline of the downtown area in which it is located. Despite the difficulties created by the decline, the operation has survived. It appears that in the not too distant future, there will be an economic upsurge and the milieu of the operation and the operation itself will be restored to that of earlier times. This process will indeed take time. In the meantime, the present hours of the licensee will enable it to keep the clientele it has established - in all likelihood to survive as a viable operation. The restriction would likely put the operation out of business. The piano player is under contract until May.

The Tribunal has taken notice of the pronouncements on behalf of the Provincial Government as to concern about, and support of rehabilitation of downtown areas. The continued existence of this operation is an asset to the area. If it fails, another business would be removed from the downtown area at a critical time, with attendant general negative effects.

The Tribunal notes that the Board made its decision of 17th August, 1978 subject to review at the end of the three-month period next ensuing.

The Tribunal is of the opinion that the approach should be not to require the licensee under the circumstance of this case to demonstrate compliance under a handicap but to allow this licensee more time to demonstrate a continuing ability to comply with the section. The onus will continue to be on the licensee to comply or have the restricted hours attached as a term and condition of the licence.

Would the licensee not really be 'aggrieved' if while trying hard to comply and having success it had been put out of business (or crippled) by an immediate restriction on sales of liquor as feared. There was no evidence before the Tribunal that the licensee was taking advantage of the situation; on the contrary, all evidence pointed to exactly the opposite attitude.

The Tribunal hereby alters the decision of the Board to read:

"commencing Monday, the 19th day of February, 1979, there shall be attached to the said licence the term and condition that the sale of alcoholic beverages in the 'Dining Lounge' of William J's Tavern shall cease at 11:00 p.m. daily until such time as the requirements of Section 6 Subsection (5)(a) of Regulation 1008/75 are met provided that if the total receipts from the sale of liquor and food during each of the months, December, 1978 and January, 1979 are in conformity with the said section the said term and condition shall not become effective.

SHALAMAR RESTAURANT, London

Dining Lounge Licence
issued to
Salvatore Giuseppe Galera
APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: MICHAEL SLAN representing the Licensee
S. A. GRANNUM representing the Liquor Licence Board

DECISION: 20 December, 1978

Salvatore Giuseppe Galera is the licensee (#020002) of premises classified as a restaurant known as Shalamar Restaurant located at 782-784 Dundas Street East, London.

The licence is a Dining Lounge Licence
Serial #A1159 in respect of 1 room located
Main Floor: Centre Section
capacity 103.

Terms and conditions attached to the licence are set out in Ontario Regulation 1008/75, including the following.

Section 6

(5) In each premises for which a dining room or dining lounge licence is issued.

- (a) the total receipts from the sale of liquor in any month shall not exceed the total receipts from the sale of food in the same month;

On the 20th day of January, 1978 the Board issued a Proposal

"to attach to the dining lounge licence for the above-named establishment a TERM and CONDITION that the sale and service of liquor in the establishment shall cease at 10:00 p.m.

FOR THE FOLLOWING REASONS:

The licensee is carrying on activities that are in contravention of Section 6, subsection (5) of Regulation 1008/75 under The Liquor Licence Act 1975 and in particular, the total receipts from the sale of liquor in the dining lounge have exceeded the total

receipts from the sale of food in each month during the period commencing July, 1977 and ending December, 1977.

The licence holder has filed with the Board a statement of gross sales of food and liquor as follows:

<u>Month & Year</u>	<u>Total Food Receipts</u>	<u>%</u>	<u>Total Liquor Receipts</u>	<u>%</u>
July, 1977	3,109.73	44	3,980.81	56
Aug. "	1,535.75	25	4,607.22	75
Sept. "	1,128.23	23	3,848.11	77
Oct. "	2,573.07	27	6,699.90	73
Nov. "	2,377.83	30	5,564.55	70
Dec. "	4,377.04	45	5,422.41	55 "

At a hearing on April 4, 1978 the following figures were placed before the Board:

Jan. 1978	5,680.92	50	5,708.15	50
Feb. "	4,589.34	52	4,316.08	48
Mar. "	3,178.70	51	3,079.22	49

After the hearing the Board by letter of April 4, 1978 advised the licensee:

"At the conclusion of the proceedings conducted by the Board today, it was indicated that the decision would be "RESERVED", pending the food and liquor sales in these licensed premises being monitored in the immediate future by members of the Inspection Staff of the Board.

Further, as you will recall, you were advised that this operation would be reviewed from the standpoint of the food and liquor revenue generated in this establishment upon receipt of the figures for the three-month period ending June 30th, 1978".

The following figures were subsequently received by the Board:

<u>Month & Year</u>	<u>Total Food Receipts</u>	<u>%</u>	<u>Total Liquor Receipts</u>	<u>%</u>
Apr. 1978	3,883.15	51	3,703.00	49
May "	3,010.07	50	3,009.68	50
June "	1,874.02	48	2,065.68	52
Jul. "	3,081.97	52	2,902.33	48

The figures from January, 1978 to July, 1978 were inserted in the Notice of Proposal.

On the 15th of August, 1978, the Board issued a decision:

"....following the aforesaid monitoring procedures and information being received to the effect that the liquor sales in this establishment continue to exceed the food sales, the Board FINDS that the premises are operating in contravention of Section 6 Subsection (5)(a) of Regulation 1008/75 under The Liquor Licence Act, 1975.

THEREFORE, commencing on MONDAY, the 4th day of SEPTEMBER, 1978, it will be a "TERM and CONDITION" of the licence granted to Salvatore Giuseppe Galera, in respect of the Shalamar Restaurant, that the sale and service of spirits, beer and wine shall CEASE at 10:00 p.m. daily until otherwise ordered by the Board".

It is to be noted that no specifics were given in respect of the information and the finding.

On the 29th and 30th days of May, 1978, K.R. Firth an investigator of the Liquor Licence Board had attended Shalamar Restaurant to monitor receipts from sales of food and liquor. His procedure was to clear the register at the start of the business day and then take periodic readings direct from the register. The following are the figures produced and reported to the Board:

Monday, May 29th, 1978

	<u>Food</u>	<u>Liquor</u>	<u>Misc.</u>	<u>Tax</u>
5 p.m.	\$65.86	33.04	6.10	2.28
1 a.m.	<u>24.14</u>	<u>51.35</u>	<u>1.25</u>	<u>3.80</u>
Total	90.00	84.39	7.35	6.08

Tuesday, May 30th, 1978

2 p.m.	4.09	5.58	nil	.42
8 p.m.	51.46	11.88	nil	nil
1 a.m.	4.39	100.14	.75	6.97
Total	<u>59.94</u>	<u>117.60</u>	<u>.75</u>	<u>7.39</u>

Based on the above report, the Board issued the decision of 15 August, 1978.

The licensee was not made aware of this report and was not given the opportunity to question or comment thereon. The Tribunal is of the opinion that the above procedure, which may have been well intended, was improper and contrary to the intent of the Liquor Licence Act as expressed in Sections 12

and 13, and of the Statutory Powers Procedure Act. As was elicited at the Tribunal hearing, certain statements in the report which raised doubts did have an explanation.

A course which may have been followed was to adjourn the hearing pending receipt of further information and to have set a new date for a continuance of the hearing after due notice to the licensee.

At the hearing before the Tribunal the following further monthly figures were filed:

<u>Month & Year</u>	<u>Total Food Receipt</u>	<u>%</u>	<u>Total Liquor Receipts</u>	<u>%</u>
Aug. 1978	3,108.61	51	3,017.61	49
Sept. "	4,971.01	51	4,692.90	49
Oct. "	4,091.00	50	3,968.00	50
Nov. "	4,689.00	65	2,473.00	35

Salvatore Giuseppe Galera commenced business in 1966, operating an unlicensed restaurant of 55 seats - serving mainly Pizza and Italian style dishes at 773 Dundas Street under the name of Sammy's Pizza, until 1972.

His business indicated the need for a bigger location, and when a building across the street came up for sale he purchased and renovated it, opening in 1975.

In 1976 he obtained a dining room licence and in 1977 he applied for a dining lounge restaurant. He changed the name to Shalamar Restaurant to inform prospective customers passing by that more than pizza was available on the menu; that it was a restaurant as generally understood. During the course of the operation he changed the hours of operation several times for staff and personal reasons.

In 1976, to increase trade he commenced the playing of recorded music in the evening. It was at this time that difficulties arose in maintaining receipts from the sale of food to be greater than receipts from the sale of liquor.

In March, 1977, the Liquor Licence Board called him in with respect to the imbalance. The balance did not get any better and the explanation was family difficulties which took his attention away from the business.

After the Notice of Proposal, and Hearing, he initiated measures to re-establish an increase in food sales.

It was verified by 3 employees of the Board who visited the premises from time to time that there was a scarcity of patrons who ate. However, it was established that the

restaurant had full facilities and staff for food service; indeed the kitchen was extremely well equipped. The proprietor introduced new dishes, advertised certain dishes as specials at reasonable rates, provided a second menu when he took over a pizza operation which he had previously leased out, instructed waitresses to emphasize the service of food upon the appearance of a customer, opened earlier for breakfast, and initiated a procedure whereby in the evening, special trays of food are made up and presented from table to table in order to persuade patrons to purchase from the tray. Again the evidence of Board employees was that the licensee was trying to promote the increase of food sales. The music being provided was changed to have a broader appeal.

It appears that a major difficulty of the licensee was due to his poor record keeping and inadequate accounting procedures.

From 1972 to June, 1976 he appeared to have meagre though satisfactory record procedures. At that time he was persuaded by a patron that he (the patron) would look after the books and attend to all necessary matters with respect to accounting. This patron suddenly disappeared from London early in 1978. This was the explanation for the gap in the daily records. That explanation was confirmed by the fact that the person keeping such records signed one of the monthly reports on record with the Board. The daily record ledger book set up in April, 1978, kept by the son, is also of a very meagre nature and the operation and accounting procedures leave much to be desired. Discrepancies were such that they leave the entries for a substantial period open to doubt. For example, in the daily entry for May 30th receipts are much larger from sales of food than, and completely out of line with the figures as monitored by Mr. Firth. The receipts from the sale of liquor for the 31st of May are extraordinarily low. Mr. Galera stated that he discovered these and other discrepancies only recently. It is clear that the doubts of the Board as reflected in the Minutes of the Board hearing with respect to the figures, had validity. The employees of the Board who had dealings with Mr. Galera stated that they found him at all times to be open and honest. They had no reason to doubt the accuracy of the statements of the licensee.

The Tribunal has been of the opinion that relevant criteria should be used as a basis if the exercise of discretion is to be in favour of the licensee in respect of action to be taken in enforcing compliance with the term and condition set out in Section 6(5)(a).

The criteria that have been stated are as follows:

1. The operation by the licensee is a bona fide restaurant (food) operation
2. Reasonable efforts are being made by the licensee to meet the requirement of the regulation
3. Reasonable success toward the goal of meeting the requirements in a reasonable period of time is being had.

There must, of course, be compliance in due course.

In respect of the operation of Shalamar Restaurant the facts as found by the Tribunal show

1. The operation is reverting to that of a bona fide restaurant - the menus, the facilities, the service all indicate this.
2. Reasonable efforts at the licensee's disposal, and innovations are being made.
3. Success in increasing receipts from the sale of food is being had. However, the figures with respect to Item 3 have to be established as being correct.

Under the circumstances, the Tribunal is of the opinion that the best procedure to be followed is to grant the licensee the opportunity to set up adequate record keeping procedures and demonstrate thereby that the measures he had initiated with respect to the food in recent times did in reality enable him to conform to the requirements set out in Section 6(5)(a).

THE TRIBUNAL ORDERS that the decision of the Liquor Licence Board in respect of the said licence that "commencing on Monday, the 4th day of September, 1978 it will be a 'TERM and CONDITION' of the licence granted to Salvatore Giuseppe Galera, in respect of the Shalamar Restaurant, that the sale and service of spirits, beer and wine shall CEASE at 10:00 p.m. daily until otherwise ordered by the Board"

be altered to read:

"commencing Monday, the 19th day of February, 1979, there shall be attached to the said licence the term and condition that the sale of alcoholic beverages in the 'Dining Lounge' of Shalamar Restaurant shall CEASE at 10:00 p.m. daily until such time as the requirements of Section 6 Subsection (5)(a) of Regulation 1008/75 are met provided that if the total receipts from the sale of liquor and food during each of the months, December, 1978 and January, 1979 are in conformity with the said section and provided that the licensee shall forthwith initiate such record keeping and accounting procedures, and engage qualified assistance in the maintenance of the records to demonstrate compliance with Section 6(5)(a) and (b) of the Regulations as shall be satisfactory to the Liquor Licence Board, the said term and condition shall not become effective."

PROS RESTAURANT, Scarborough

Application for a Dining Lounge Licence
by

Vasilios (William) Ouzounis
APPEAL FROM REFUSAL TO ISSUE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON, Q.C., and
BARBARA J. SHAND, MEMBERS

COUNSEL: BARRY FOX representing the applicant
S.A. GRANNUM representing the Liquor Licence Board
K. H. MACDIARMID, Q.C. appearing for the Borough
of Scarborough

DECISION: 12 January, 1979

Vasilios (William) Ouzounis, the applicant and appellant, has been the sole proprietor of the restaurant business known as Pros Restaurant at 1591 Ellesmere Road in the Borough of Scarborough since about June, 1976 when he purchased the business, having been employed there for about a year previously. He is assisted by his son and the operation can be described as a family undertaking.

The restaurant is a typical one, well, but modestly appointed. It has one dining room with a seating capacity of 65 persons; there is both counter and table service, with a regular menu and average price of \$2.75. Outdoor signs indicate "Fish & Chips" "Fast take-out Orders" "Charcoal Broiled Burgers" "Breakfast Specials 6 to 11 a.m." No entertainment is provided.

The value of the operation is \$85,000, of which \$50,000 is an investment by the proprietor and \$35,000 is owed

The restaurant is situate in a typical small community business block known as Progress Plaza in existence since the early 1960's, at which time the restaurant was established. In the plaza there are 9 other businesses including a bank, a bakery, a milk store, a hardware store, a smoke and gift shop, a sports shop, a beauty salon, and a rent-all shop. There are also some 7 offices. These enterprises basically serve the neighbourhood. Only 3 operations including the restaurant are open after 6 p.m. There are about 55 parking spaces at the front and side, and 18 at the rear. The plaza would not meet contemporary zoning standards.

It is situate on and has access to the south side of Ellesmere Road which is a significant and heavily travelled traffic artery, being one of the major roads within Metropolitan Toronto through Scarborough. The road forms a distinct line of division and demarcation in the area; to the north is an extensive industrial area, to the south there is a considerable residential area resulting from subdivision development, some 20 years ago.

The Plaza is south and across from major municipal and commercial developments known as Scarborough Civic Centre and Scarborough Town Centre which are shielded from the road by a wooded area. On its south, the Plaza abuts the residential area. The nearest home is a very short distance away, with the narrow parking lot lying in between. There is a 6' cement and wire mesh wall at the edge. There are 2 exits leading out to Paratoga Drive which runs south from Ellesmere Road into the residential area on the west side of the Plaza.

The nearest licensed premises is the Town and Country about one-half mile east of the Plaza. There are 5 licensed restaurants within the Scarborough Town Centre. There are 5 other licensed establishments in the general district. All are about a distance of a mile or so away and are situate generally on north-south traffic routes.

On or about October 25th, 1977 the applicant applied for a dining room licence for the sale and service of beer and wine.

Following his initiating the application the proprietor, believing that there would be no opposition to his application because no opposition had been made to previous applications within Scarborough, expended \$16,000 in meeting the requirements of various authorities. He had not realized that the procedures before the Liquor Licence Board should be finalized before undertaking the fulfilling of other conditions necessary for the issuance of a licence.

Notice of the application was published in the Toronto Star on March 28th, 1978 and on April 4th, 1978, and pursuant thereto a public meeting was held at 55 Lakeshore Blvd. East, Toronto on Tuesday, April 11th.

Prior to and at the date of the public meeting there were filed with the Board written objections to the issuance of the licence. The objections consisted of the following:

- a) Resolution of the Council of the Corporation of the Borough of Scarborough dated March 28th.
- b) Letter dated March 22nd, 1978 from Mr. David Warner, M.P.P. Scarborough-Ellesmere.
- c) Petition containing 341 signatures of residents of nine streets in the immediate vicinity of the plaza.
- d) Letters from four private citizens.

Prior to and at the date of the public meeting, there was filed with the Board the following written material in favour of the application:

- a) Letters from four private citizens.
- b) Petition containing 453 signatures of patrons of the restaurant.

At the public meeting several persons appeared and voiced objection to the issuance of the dining room licence.

After the public meeting, there was filed with the Board a petition containing the signatures of 750 persons who are opposed to the granting of a liquor licence to the applicant. In addition to the said petition, there were filed in objection to the granting of the dining room licence, letters from the Midland Park Residents' Association, the South Bendale Ratepayers' Association, the Donwood Park Community Association and the North Bendale Ratepayers' Association. The Corporation of the Borough of Scarborough, at a meeting on the 19th of June, 1978, passed a further Resolution opposing the issuance of a liquor licence to Pros Restaurant.

On or about the 26th of June, 1978, the solicitor for the applicant filed with the Board 795 form letters signed by individuals residing in the Borough of Scarborough who indicated their approval of the granting of a liquor licence.

On the 12th day of July, 1978, the Liquor Licence Board issued a Notice of Proposal pursuant to Section 12 of the Liquor Licence Act, 1975:

"to refuse to issue a dining room licence to the applicant because the issuance of the licence is not in the public interest, having regard to the needs and wishes of the public in the municipality in which the premises is located."

On the 18th day of September, 1978, the Board issued its decision:

"The Board has now reviewed all aspects of this application for licence, including the objections lodged by the residents of the area, the petitions, both against and in favour of the issuance of a liquor licence to this establishment.

Accordingly, the Board FINDS that the applicant is not entitled to a licence for the aforesaid reason, as set out in the 'Notice of Proposal'."

The refusal to issue was the first in the Borough of Scarborough.

Prior to the Tribunal hearing, there were received by the Registrar, 10 letters in favour of issuance, 4 reiterating their statement to the Board, and 19 letters in objection to issuance, 9 reiterating their statement to the Board. There were filed 2 further petitions of 62 names in objection.

At the hearing, 31 persons attended to express being in favour of, and 10 persons attended to express being opposed to the issuance. A number of these had already expressed their position to the Board and to the Tribunal. Representations were made on an individual and representative basis.

At the beginning of the Tribunal hearing the Chairman expressed the following:

"For the record it is to be noted that the Tribunal, being of the opinion that it is impracticable to give notice of the hearing to all or any of the parties individually because the parties to these proceedings before it are so numerous and the interested parties could not readily be discerned, the Tribunal did instruct the Registrar to insert the advertisement set

out in Exhibit 6 (Toronto Star dated November 8, 1978) as notice to all concerned of the Appointment for and Notice of this hearing."

Objections to the issuance of a licence are based on a number of reasons set out variously in a letter dated 15 March, 1978 on behalf of the Glen Andrew Community Association, in the preamble of the major petitions and in individual letters and statements. They can be summarized as:

- Inadequate parking facilities in Progress Park Plaza with resultant congestion and overflow in residential streets
- Traffic flow and pedestrian problems by reason of existing movement pattern created by the physical construction of Ellesmere Road and the Saratoga Drive entrance, and the access and exit facilities of the plaza
- Inadequate buffering between the rear of the plaza and adjacent private homes with respect to noise and lights
- Possibility of expansion of Pros Restaurant and extension of hours of operation and eventual conversion to a disco operation
- Aggravation of the problems attributed to automobiles by increased restaurant patronage attracted by liquor service
- The possibility of increased vandalism
- The exposure of children to a restaurant where alcoholic beverages are served and anxiety for their wellbeing
- An undesirable change in character in a small neighbourhood convenience plaza by the service of alcoholic beverages
- A disruption of the neighbourhood.

Though such specific objections were detailed, it emerged that the underlying objection stemmed from a desire to "preserve our residential area" and the general position taken was "that the granting of such a licence is not in the best interest of this community and the families who frequent this small neighbourhood plaza." There was a strong opinion that generally neighbourhood convenience plazas which abut residential areas are not suitable for licensed premises. There was minimal expression that the municipality was saturated with licensed establishments, though comment was made that the number was sufficient.

The wishes expressed of a substantial part of the public resident in the immediate area, with limited exceptions are clear: a licence should not be issued.

The validity of the reasons were challenged, disputed, and contradicted; there were different points of view on the same issue. However, the sincerity of those who subscribed to the reasons for objection and the strength of their belief is unquestionable.

The Traffic problem and other associated difficulties cannot be ascribed to the restaurant alone. Its share is only a part and the condition is typical of similar complexes. But the problem is real, and it and any enlargement is of genuine concern. That licensing for beer and wine would result in bad effects, in vandalism, and in a deleterious change in the environment of the Plaza is a matter of serious apprehension though doubts that such would take place were voiced by those who supported the application. The possibility of a significant change brought about by expansion and extension of operations as well as the nature thereof, was a strong factor in the opposition to the issuance. A suggestion that conditions be imposed to control such aspects did not change the position of the objectors. The wish to retain the style of living enjoyed through the years was expressed with passion.

95% of the persons whose needs, as evidenced by their patronage through the years, are served by the restaurant are not drawn from the neighbouring residential area. It would appear that nearby residents make little use of the restaurant during the day and go elsewhere for evening dining. Such residents did not voice 'need' for a licensed restaurant. The restaurant could not survive on the business derived from the residential area. Its patronage consists of merchants, business men, and workers from the other plaza shops and offices and the municipal centre. It depends greatly on a transient trade of delivery men, truck drivers, taxi drivers, and others who come in for a work break, snack, or a full meal. The prices, menu, environment, and convenient location on the through road, all are the reason for this kind of patronage. Of the licensed restaurants in the district, two others have the combination of factors that appear to be suitable and attractive to that patronage. The remainder have an atmosphere and menu which do not lend themselves to the transient trade that goes to Pros Restaurant. It is from this group of persons mainly from scattered areas in the Municipality that support for the application is drawn.

Persons who are attracted to the Scarborough Town Centre for shopping are the ones who patronize the variety of restaurants there. The patronage of the Plaza and that of the Town Centre are quite distinct. The time necessary to go into and out of the Town Centre is not great, though it could be of some significance to someone pressed for time or on the move.

Pros Restaurant does render a particular service to certain of those who come to work in the neighbourhood and to others who in the course of their participation in service industries find it a place of convenience.

Prior to the Board public meeting the Council of the Borough of Scarborough on the 28th of March, 1978 upon the petition by Glen Andrew Community Association passed a resolution by a vote of 12 to 3 as follows:

"WHEREAS the abutting residential neighbourhood petitioned the Liquor Licence Board of Ontario to deny the granting of this licence on the grounds that it is not in the public interest, and
WHEREAS the Glen Andrew Community Association supports the neighbourhood in their petition to the Liquor Licence Board of Ontario,
THEREFORE BE IT RESOLVED that the Council of the Borough of Scarborough support the community in its request to deny the said application, and
BE IT FURTHER RESOLVED that this Resolution be forwarded to the Liquor Licence Board of Ontario Hearing considering this application."

Prior to the Board hearing the Council on the 19th of June, 1978 passed a resolution by a vote of 10 to 4 as follows:

"that Council having considered submissions from the applicant as well as representatives from the area residents, oppose the issuance of a liquor licence to Pros Restaurant, 1591 Ellesmere Road, as the issuance of this licence would not be in the best public interest"

The Tribunal notes that on the 25th of September, 1978 in respect of an application for a licence by Agincourt Fish and Chips Restaurant, 412 Sheppard Avenue, Agincourt, a resolution "that the Council support the community in its request to deny the said application and that this resolution be forwarded to the Liquor Licence Board of Ontario" did not proceed to a vote. The proponent of the resolution (as reported) had said "local residents felt that a liquor licence would detract from the community...children would no longer be able to frequent a variety store located in the same plaza as the licensed restaurant...."

Further, the Tribunal notes that on the 10th of October, 1978 in respect of an application by Kennedy Restaurant for a liquor licence a resolution "that Council support the residents in their request to deny the said application, and that this resolution be forwarded to the Liquor Licence Board...." was not voted upon.

Council passed a resolution that the petition lodged with the Clerk be forwarded to the Liquor Licence Board and that no further action be taken, by a vote of 9 to 5.

The Tribunal interprets the action by the Scarborough Council as not taking any general position, nor as setting out guidelines for a continuing position in the matter of applications for Liquor Licences within the municipality, but merely as supporting the residents in the neighbourhood of Progress Plaza in their objection with respect to Pros Restaurant.

At the Tribunal hearing one alderman was in support of the application and one alderman was in opposition.

The wording of the Liquor Licence Act (in Section 6) clearly indicates that there is an entitlement to a licence, i.e. the applicant is entitled to be issued a licence unless he comes within certain exceptions listed in Section 6 (1) (a) to (g). In this case the applicant's entitlement is not adversely affected by the provisions of Paragraphs (a) to (f). During the period of operation by the applicants nothing appears that is negative to him either in business or personally. Indeed, views expressed in respect of the operation as to appearance, facilities, staff, and service, and in respect of the proprietor personally including views as to his operation if licensed, were favourable.

What is at issue is the exception to entitlement set out in Paragraph (g) "where the issuance of the licence is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located". It is a matter of judgement for the Board to determine what is 'in the public interest' and the basis of this is a "regard" by the Board "to the needs and wishes of the public in the municipality". This determination is not an easy one.

The legislation provides that public interest must be determined in the light of 2 aspects. Firstly, regard must be had to both "needs" and "wishes"; consideration and weight must be given to both factors. Secondly, these 2 aspects must be examined in the context of the public of the municipality in which the premises are situate, not in the context of just the particular public resident in the vicinity where the premises are physically situate. Consideration cannot be restricted to that of "needs" alone or "wishes" alone,

nor to either of these matters from the point of view of one particular group. However, the Tribunal is of the opinion that in determining wishes different weight must be given to points of view in the light of all the circumstances. For example, the views of those of the immediate neighbourhood as to the effects, and accordingly their needs and wishes are more significant because they are most directly affected by the physical presence of the licensed establishment.

Since there is no machinery available under the Act for a scientific determination of needs and wishes, the Board can only proceed on the material which is placed before it. The Board has heard those directly affected and their representatives. The Board has also resorted to the receipt of letters, petitions, and a resolution by the Council of the municipality. The Tribunal has emulated the Board and also accepted the same presentation. We believe it to be necessary to do so as the fullest and most convenient method of total citizen input. A mere count of names to arrive at a majority is not the proper course.

The wishes expressed by the bulk of the public in the municipality resident in the immediate area are clear; no licensed premises in the Plaza. This negative attitude can also be interpreted as being an expression of a need for convenience, safety, quiet, and a continuance of the present environment.

The wishes of many of that part of the public who work within this area of the municipality and who make their contribution to the industry and community are also clear: "the restaurant patronized by them should be licensed." There was need for such licensing that their wishes to have beer and wine with their food could be satisfied. That these persons do not reside in the immediate area does not mean that their needs and wishes are not to be considered; they are part of the public in the municipality.

The question resolves itself into a determination of whether the needs and wishes of those opposed to the issuance of the licence should be considered as being greater than the needs and wishes of those who favour the issuance. It is clear that upon consideration of the needs and wishes of the persons who communicated the same to the Board as above, the Board accepted the needs and wishes of the immediate residents as being the greater in determining the public interest and decided accordingly that the issuance of the licence was not in the public interest.

The Tribunal agrees with that decision. The needs and wishes of those who support the issuance of a licence to Pros Restaurant can be satisfied at other licensed establishments within the municipality, but the needs and wishes of

those who oppose the issue can only be met by a refusal to issue. The Tribunal is of the opinion that the situation is exactly that envisaged by the Legislature in its enactment of Section 6 Subsection (1) Paragraph (g) of the Liquor Licence Act, 1975.

Counsel for the applicant has cited the decision of the Tribunal in Leaside Restaurant (1 L.L.A.T. 1) in support of the application. However, in that case the needs and wishes of the restaurant's clientele could not be satisfied for resort elsewhere was difficult and "the existence of ... (other) premises ... further away (did) not lessen the needs fulfilled by the appellant's premises in respect of the workers in the area." Those in opposition to the issuance did not object to the "granting of a liquor licence" per se. Under the circumstances of that situation the Tribunal directed the issuance subject to conditions--in effect, a limited licence which responded generally to the total needs and wishes expressed.

It is likely that the refusal herein to issue a licence will be a hardship to the applicant. It is to be hoped that the residents of the neighbourhood will patronize the restaurant to a degree that will alleviate any loss due to the lack of licence.

The disentitlement is not to be taken as a reflection on the applicant or the operation.

The Tribunal hereby confirms the decision of the Liquor Licence Board dated the 18th day of September, 1978.

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Liquor Licence Appeal Tribunal



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LIQUOR LICENCE APPEAL TRIBUNAL

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Volume 3



LIQUOR LICENCE APPEAL TRIBUNAL
SUMMARIES OF DECISIONS* - VOLUME 3
Cited 3 L.L.A.T.

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Published pursuant to the Liquor Licence Act, 1975
Statutes of Ontario, 1975, Chapter 40

LIQUOR LICENCE APPEAL TRIBUNAL

INDEX

SUMMARIES OF
DECISIONS

VOLUME 3

<u>Name of Establishment</u>	<u>Appeal From</u>	<u>Page</u>
Amaral Restaurant	Terms and Conditions	1
Bassels II	Terms and Conditions	12
Bavarian Restaurant & Tavern	Suspension	16
Beef Baron Tavern	Terms and Conditions	20
Blueschooner Restaurant	Terms and Conditions	30
Bordeaux Restaurant	Terms and Conditions	36
Christopher's Steak House Restaurant	Terms and Conditions	44
Donwood Restaurant	Refusal to Issue Licence	51
Hour Glass Tavern	Suspension	55
International Tavern	Suspension	61
Kerby Hotel	Refusal to Renew Licence	67
Lido Tavern	Revocation	75
Northway Hotel	Suspension	80
Oasis Restaurant	Suspension	89
Peaches Restaurant	Terms and Conditions	95
Claude Quesnel	Refusal to Issue Licence	97
Roadway (Friendship) Inn	Refusal to Issue Licence	105
Sanga Tavern	Terms and Conditions	110
Shangrila Chalet Restaurant	Issuance of Licence	117
Stage 212 Hotel	Suspension	130
Stars Restaurant	Terms and Conditions	138
Undermount Tavern	Terms and Conditions	140

LIQUOR LICENCE APPEAL TRIBUNAL
CROSS INDEX TO VOLUME 3

<u>Licensee or Applicant</u>	<u>Page</u>
Ace Submarine Limited (Shangrila Chalet Restaurant)	117
Amaral, Manuel Antonio and Mrs. Aldina M. Amaral (Amaral Restaurant)	1
Barletta, Domenico (Beef Baron Tavern)	20
Bassels, Peter (Bassels II)	12
Big-Bite Delicatessen (Scarborough) Limited (Hour Glass Tavern)	55
Blueschooner Ontario Limited (Blueschooner Restaurant)	30
Bordeaux Restaurant Limited (Bordeaux Restaurant)	36
Butvydas, Aleksandras and Isabelle Butvydas (Lido Tavern)	75
Donwood Restaurant Limited (Donwood Restaurant)	51
DRF Business Consultants Limited (Peaches Restaurant)	95
Lefkaditis, Konstantinos (Oasis Restaurant)	89
Nine and Jack Enterprises Limited (International Tavern)	61
Nowak Enterprises Incorporated (Bavarian Restaurant & Tavern)	16
Quesnel, Claude	97
Radusin Investments Limited (Northway Hotel)	80
Samartgis, Stauros Christopher (Christopher's Steak House Restaurant)	44
Sterio's Restaurants Limited (Sanga Tavern)	110

<u>Licensee or Applicant</u>	<u>Page</u>
212 Dundas Street East Ltd. (Stage 212 Hotel)	130
332529 Ontario Limited (Kerby Hotel)	67
360514 Ontario Limited (Undermount Tavern)	140
371800 Ontario Limited (Stars Restaurant)	138
Toolsie, Jagdat Vincent (Roadway (Friendship) Inn)	105

NOTES ON APPEALS FROM TRIBUNAL DECISIONS
TO SUPREME COURT OF ONTARIO
DIVISIONAL COURT

Amaral Restaurant Appeal withdrawn	3	L.L.A.T.	1
Barn Steak House Tavern Appeal withdrawn	2	L.L.A.T.	52
Beef Baron Tavern Appeal proceeding	3	L.L.A.T.	20
Blueschooner Ontario Limited Appeal proceeding	3	L.L.A.T.	30
Bordeaux Restaurant Limited Appeal proceeding	3	L.L.A.T.	36
Sterio's Restaurants Ltd. Appeal proceeding	3	L.L.A.T.	110

AMARAL RESTAURANT, London

Dining Lounge Licence
 issued to
 Manuel Antonio Amaral and
 Mrs. Aldina Maria Amaral
 APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
 JACK C. SIM and
 BARBARA J. SHAND, MEMBERS

COUNSEL: MALCOLM BENNETT representing Licencees
 S.A. GRANNUM representing the Liquor Licence Board

DECISION: 17 JULY, 1979

Manuel Antonio Amaral and Aldina Maria Amaral are the licencees, Number 020797 and the owners of premises classified as a restaurant and known as Amaral Restaurant, 475 Highbury Avenue, London. The Licence issued is a Dining Lounge Licence Serial #A2925 in respect of a room located on the main floor, East Section, Capacity 118 persons.

The restaurant has operated since 10 March, 1977 and the dining lounge licence was issued on August 24, 1977.

On July 21, 1978 the Liquor Licence Board issued a Notice of Proposal to attach a term and condition to the dining lounge licence of the above-named establishment that:

" the sale and service of liquor in the establishment shall cease at 10:00 p.m."

FOR THE FOLLOWING REASONS:

" The licensee is carrying on activities that are in contravention of Section 6, subsection (5) of Regulation 1008/75 under The Liquor Licence Act and in particular, the total receipts from the sale of liquor in the dining lounge have exceeded the total receipts from the sale of food in each month during the period commencing November 1st, 1977 and ending June 30th, 1978.

The licence holder has filed with the Board a statement of gross sales of food and liquor as follows:

<u>Month & Year</u>	<u>Total Food Receipts</u>		<u>Total Liquor Receipts</u>	
November, 1977	(no statement provided by licensee)			
December, 1977	\$3,986.00	(40%)	5,901.00	(60%)
January, 1978	5,292.00	(58%)	3,788.00	(42%)
February, 1978	8,869.00	(48%)	9,515.00	(52%)
March, 1978	8,073.00	(41%)	11,457.00	(59%)

Licence holder has been unwilling or unable to provide statements showing the sales of food and liquor for the months of April to June, 1978 inclusive."

On the 14th September, 1978 the Board initiated a hearing in the matter. The Board did not conclude the hearing, but directed the following:

"so that it would be in a better position to assess the operation of this restaurant from the standpoint of food and liquor sales:

- (1) Figures pertaining to food and liquor revenue received during the months September to December, 1978 inclusive, to be submitted to the Area Inspector on a monthly basis no later than the 15th day of the following month.
- (2) A printed menu in an appropriate format setting forth the bill of fare provided in these premises to be forwarded to the Board in the near future."

The Board stated it was reserving its decision insofar as the above-mentioned 'Proposal' was concerned until it had an opportunity to peruse the monthly food/liquor statements and that the licensees would be advised as to its findings shortly after December 31, 1978.

On the 25th January, 1979 the Board advised the licensees that it proposed to continue the hearing on 1st March, 1979, that there would be introduced:

"as evidence... monthly statements of sales of food and liquor for the period December, 1977 to

December, 1978, and the report of Investigator Brooks, a copy of which is enclosed."

That report stated in part:

"...On Friday, January 12th, 1979, accompanied by Inspector K. Player we visited the above noted premises. We were met by Mr. A. Amaral...During a tour of the premises I observed that the decor and furnishings were of good quality..The kitchen is equipped with ample appliances for the preparation of food...

The freezers two chest type and one walk in contained very little food. The walk in freezer contained two beef roasts, the rest of the space was taken up by full cases of beer. One chest freezer contained two large bags of ice cubes and the other a small amount of food.

....The preparation of food is done by Mr. Amaral, his wife and his father. On Friday the food preparation had not begun at 11:45 a.m., the grill and stove had not been lit.

The food is served from a steam table located in the bar area. Hot beef buffet was offered at noon luncheon hour with pork chops added later in the day.

There is no official menu in effect that could be presented to a patron at the table. There is no table service for food. If a patron was not directed to the steam table, it may be overlooked as it is a small display. The hot beef was \$2.50 and swiss steak on Saturday was \$2.95.

The tables were set up on Friday with place mats and napkins. The tables were all cleared of these articles at 1:30 p.m. On Saturday no place mats and napkins were in evidence on any table...

An older type cash register is used to register all sales of food and liquor. All liquor and beer sales are registered in the same manner on the one entry key with food on the second.

It was learned that this cash register was on loan as their computerized cash register was in for repairs and has been for the past two months or more.

The cash register did not contain any tape. They have not used a tape in this machine since they have had it. It was therefore impossible to verify any past sales. They did not have any daily cash sheets available.

The only figures available were contained in a small make-shift sales journal which was only for December, 1978 and the first of January, half of the December entries were missing as the page had been torn in half.

The bookkeeping is very, very poor, almost non existent. They claim to have had a bookkeeper but he left and has not been seen for some time...

The figures submitted for Friday, January 12th, 1979 are not accurate and are a compromise between the owner and myself.

Since the cash register did not contain any tape it was impossible to trace the error. The figures that had been recorded up to 9:00 p.m. Friday appeared accurate but after 9:00 p.m. the food figure was recorded as \$582.00. This was impossible as the buffet is cleared from the steam table and only sandwiches are sold. It appeared that since the cash register was being operated by Mr. Amaral's brother, his wife and two waitresses many sales were punched on the wrong key. The cash was balanced and the \$582.00 recorded for food between 9:00 p.m. and 1:00 a.m. was reduced to \$98.30.

They have been instructed to have a tape installed in the cash register at all times and save the daily tape along with the daily cash sheets and maintain a proper sales journal for inspection at any time...

The entertainment consists of four (4) strippers (complete strip) performing from 12:00 noon until 1:00 a.m. each Monday to Saturday.

Mr. Amaral was friendly and co-operative but could not produce the information required for this investigation.

The results of the monitor on Friday, January 12th and Saturday, January 13th, 1979 are as follows:

<u>Friday, January 12th, 1979</u>	<u>Liquor</u>	<u>Food</u>
12:00 p.m. - 3:00 p.m.	\$319.35	\$140.50
3:00 p.m. - 6:00 p.m.	385.10	48.00
6:00 p.m. - 9:00 p.m.	318.75	135.20
9:00 p.m. - 1:00 a.m.	415.65	98.30
Total:	1438.85	less 422.00
		10%
	1295.00	75% 25%

<u>Saturday, January 13th, 1979</u>	<u>Liquor</u>	<u>Food</u>
12:00 p.m. - 3:00 p.m.	\$198.60	\$ 41.10
3:00 p.m. - 6:00 p.m.	211.85	76.40
6:00 p.m. - 10:00 p.m.	211.00	45.60
10:00 p.m. - 1:00 a.m.	193.00	35.00
Total:	814.45 less 10%	198.10
	733.00 78%	22%

The following figures were offered by the owner from a make-shift sales journal, there were no cash register tapes or daily cash sheets to substantiate the figures. The totals from the monitor have been included to give the weekly totals:

<u>January 1979</u>	<u>Liquor</u>	<u>Food</u>
January 2, 1979	\$601.85	\$298.00
January 3, 1979	689.00	302.85
January 4, 1979	785.00	301.85
January 5, 1979	801.00	315.15
January 6, 1979	805.00	302.85
Total:	\$3,681.85	\$1,520.70
January 8, 1979	708.85	300.85
January 9, 1979	711.10	310.85
January 10, 1979	795.00	321.85
January 11, 1979	798.85	331.80
January 12, 1979	1438.85	422.00
January 13, 1979	814.45	198.10
Total:	\$5,267.10	\$1,885.45

The total sales for December, 1978 not yet submitted at the time of my investigation are: liquor \$22,846.00 and Food \$14,782.40."

After the hearing the Board held:

"that the licensees, Mr. Manuel Antonio Amaral and Mrs. Aldina Maria Amaral, are in contravention of Section 5 (31) and (31)(a) and 6 (5) and (17) of Regulation 1008.75 under The Liquor Licence Act, 1975 and in no way are operating a restaurant but merely a drinking establishment with no proper records of any kind being maintained."

and made the 'Decision'

"that commencing MONDAY, MARCH 19TH, 1979, the sale of alcoholic beverages in the Dining Lounge of the Amaral Restaurant shall CEASE at 10:00 p.m. daily until such time as the licensees are operating the said licensed premises in conformity with the Regulations to the satisfaction of the Board."

At the Tribunal hearing there was entered a statement of liquor and food as entered by the licence holder:

MONTH & YEAR	Total Liquor Receipts	%	TOTAL FOOD RECEIPTS	%
October 1977	\$ 321.85	32	\$ 668.95	68
November 1977	1,910.44	40	2,896.30	60
December 1977	1,754.20	43	2,336.14	57
January 1978	\$ 3,788.00	42	\$5,292.00	58
February 1978	9,515.00	52	8,869.00	48
March 1978	11,457.00	59	8,073.00	41
April 1978	17,754.15	51	16,809.26	49
May 1978	16,872.30	52	15,884.42	48
June 1978	15,208.65	50	14,918.00	50
July 1978	13,956.25	49	14,363.44	51
August 1978	12,738.12	49	13,129.92	51
September 1978	12,492.00	49	13,046.28	51
October 1978	16,130.00	52	14,739.50	48
November 1978	18,746.50	55	15,482.10	45
December 1978	22,846.00	61	14,782.50	39
January 1979	17,933.85	56	13,864.40	44
February 1979	13,711.30	57	10,375.35	43
March 1979	17,263.60	51	16,438.00	49
April 1979	13,438.00	53	11,811.50	47
May 1979	13,164.20	53	11,836.45	47
June 1979	17,611.15	54.3	14,824.75	45.7

Inspector Brooks testified to verify his filed report.

The restaurant is located in premises converted from a variety-grocery store, and is situate in an East London residential area with an industrial area a short distance to the north and south. There is no other licensed establishment within one mile; there are some fast food outlets within this area.

Mr. Amaral is engaged in the construction business, assisting in the operation of the restaurant which is managed by his

wife who has had some 10 years' experience. They have some \$210,000 invested in the operation made up of \$100,000 for the realty, \$70,000 for renovation, and \$40,000 for equipment and fixtures.

The restaurant from the beginning has had an attractive decor inside and outside with the general appearance of a specialty restaurant. A portable illuminated sign bore the name of the restaurant with special menu items. When the restaurant opened in March of 1977, it had a family type atmosphere of the kind generally associated with dining out, and enjoyed an immediate patronage of some proportion. However, as time went by patrons inquired as to the service of alcoholic beverages, and Mr. Amaral, on the assurance of his solicitor, kept advising that it would be a matter of some short months. When the service did not appear, patronage began to drop off and Mr. Amaral decided to close the premises for some $2\frac{1}{2}$ months. The licence was issued in August of 1977; the earlier patronage did not return to the same volume. In October of 1977 the total volume of sales was under \$1,000, and increased through January of 1978 to some \$9,000 which according to Mr. Amaral was not sufficient to make the operation an economically viable one. For these months the food percentage was 68, 60, 57 and 58.

In February, 1978 Mr. Amaral decided to introduce entertainment in order to attract business. He had erected within the premises a narrow stage along one wall. Three exotic dancers performed continuously from 12 noon to 1 a.m. The cost was some \$1,500 weekly. On the outdoor sign there was placed below the name of the restaurant, the announcement: EXOTIC ENTERTAINMENT 12-1.

The original menu which was very attractive both in appearance and in variety of food, was replaced by a one-sheet mimeographed hand-written menu inserted between sheets of plastic, with a very limited selection and in no way attractive or conducive to eating. Table service was discontinued, and persons went to the kitchen area for food service. No food checks were issued. The atmosphere of the restaurant changed. It became generally patronized by males (98%), some in business suits but in the main in work clothes. The bulk arrived in cars. Patronage of the premises was fairly consistent throughout the day and consisted in the main of individuals who attended to drink and watch the entertainment. Little food was served after 8 p.m.

After the September hearing Mr. Amaral introduced a buffet consisting of a 3-foot salad table and a 6-foot steam table from which there were served specialties of the day, together with

vegetables. Patrons came to the buffet and the items were paid for in cash at the time of service. The consumption of food did not show any increase; indeed, the figures as filed showed a decrease. The buffet table was removed at 9 p.m. or shortly afterwards; sandwiches continued to be available.

After the March 1st meeting Mr. Amaral re-instituted table service. He purchased additional equipment for the storage of food; earlier the bulk of the food was purchased daily on a fresh basis. He engaged additional staff which now consists of 2 chefs, 2 dishwashers, 5 waitresses and one hostess. The hostess now greets patrons, seats them and hands them a printed menu in an attractive leatherette folder. The new menu has an excellent variety of dishes and is varied every three months. Waitresses have been instructed to promote the service of food. The entertainment has been reduced to one full-time and one part time performer at a cost between \$600 and \$700 per week. There is now a good luncheon crowd. Some food is served at dinnertime but the consumption tapers off in the evening. Food continues to be available. Only some of the tables are set with table cloths and table service, the others being set with place mats.

The patrons still continue in the main to be working men from the industries in the general area and most of the patrons still arrive in cars. The patronage after 8 o'clock still continues to be very heavy, with half to full capacity of the premises occupied. There has been some change in the clientele and in the atmosphere since table service has begun.

At the Tribunal hearing Counsel for the Board did not pursue the matter of record keeping required by Regulation 5 (31) and (31)(a) as the responsibility appeared to have been met. Section 10 subsection (1) of the Liquor Licence Act, 1975 states:

" The Board may at any time review a licence or permit on its own initiative and attach such further terms and conditions as it considers proper to give effect to the purposes of this Act. "

This power of the Board is in addition to its power under Section 11, of revocation, suspension or refusal to renew.

One of the purposes of the Act is the licensing of restaurants to sell liquor. A restaurant is defined in Regulation 1(n)

"'restaurant' means an establishment which has full kitchen facilities for the preparation of meals and is engaged in the sale and service of meals to the public...."

It is clear that the chief operating characteristic of such an establishment is that it "is engaged in the sale and service of meals to the public." Further, where a dining lounge licence is issued to a restaurant, Regulation 6 (5) requires:

- "(a) the total receipts from the sale of liquor in any month shall not exceed the total receipts from the sale of food in the same month; and
- (b) a daily record showing the sales of liquor and food shall be maintained. "

In a consideration of compliance with the term and condition of a dining lounge licence as set out in Section 6 (5) (a), the Tribunal has set out certain criteria to serve as guidelines:

1. The operation by the licensee is a bona fide restaurant (food) operation.
2. Reasonable efforts are being made by the licensee to meet the requirements of the Regulation.
3. Reasonable success toward the goal of meeting the requirements in a reasonable period of time is being had.

In respect of Amaral Restaurant, the facts as found by the Tribunal show:

1. The operation was until February, 1978 a restaurant within the meaning of the section and as generally accepted. However, the introduction of entertainment at that time and the significant changes in food service drastically changed the operation; in fact, it became a place of entertainment and of service of alcoholic beverages with a night club environment. Though the kitchen facilities continued and food was available, instead of liquor being an adjunct to the service of food, food became an adjunct to the service of liquor. Clearly the entertainment attracted a drinking, not a dining patronage. The changes introduced by the licensee after March 1st have not yet brought about a condition where there is in actuality an operation

within the meaning of the Regulation, though the appearance thereof is there.

2. With respect to the efforts of the licensees, the initial changes to improve food sales were minimal and under the circumstances were not reasonable. Only after the decision of the Board of March 1st were any real changes instituted. No advertising of food services has yet been undertaken and the entertainment is still highlighted to attract and retain patronage. The licensees are described as honest, and there is no doubt as to their desire to comply. The operation is well managed and the food is of good quality; but that is not enough. Counsel for the licensees suggested that the licensees were not aware of the seriousness of the matter. Such a position is unacceptable. A licensee under the Liquor Licence Act should at all times be aware of the Act and Regulation and the necessity for compliance. In the present instance the monitoring of the operation by a Board investigator for 2 days was a clear signal of the utmost seriousness of the situation.
3. Since July, 1978 these licensees have been aware of an allegation of non compliance with the Regulation 6 (5). They had been continuously warned by the inspector. Reasonable time has passed for a demonstration of compliance by the licensees. The figures filed indicate that they are not in the direction of compliance.

The operation of Amaral Restaurant still falls short of being the kind of operation contemplated for a restaurant by the Act. The change of the operation in February, 1978 brought about a clientele which patronized the premises primarily for entertainment and for the consumption of liquor. The operation continues an emphasis on entertainment and liquor, with only some change in respect of the sale and service of the food aspect. The Tribunal is of the opinion that the Board had the authority under Section 10 (1) to attach the term and condition set out in its decision of the 1st day of March, 1978 and properly exercised that authority.

Since the premises of the licensee are classified as a restaurant in respect of which a Dining Lounge Licence is issued, the Board can attach a condition to ensure that the restaurant operated by the licensee "is engaged in the sale and service of meals to the public", and that the total receipts from the sale of liquor in any months shall not exceed the total receipts from the sale of food in the same month. Since the licensees are operating an establishment which is engaged in the provision of entertainment which in the evening retains patrons for the purpose in the main of consumption of alcoholic beverages the Board can impose a limitation which will make the operation one more likely to conform to the purposes of the Act.

Accordingly, The Liquor Licence Appeal Tribunal hereby confirms the decision of the Liquor Licence Board of 1 March, 1979 for the reasons herein.*

*Note: The above decision was appealed to the Supreme Court of Ontario (Divisional Court) and subsequently the appeal was withdrawn.

BASSELS II, Kleinberg

Dining Lounge Licence

issued to

Peter Bassels

APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: JOHN W. ERICKSON, Q.C., VICE-CHAIRMAN
as CHAIRMAN,
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: CHRIS J. TZEKAS representing the Licensee
S.A. GRANNUM representing the Liquor Licence Board

DECISION: DECEMBER 18, 1979.

Mr. Peter Bassels is the licensee of an establishment known as Bassels II, 10512 Islington Avenue North, Kleinburg, Ontario. The licence holder is the holder of Dining Lounge Licence No. 091072 for premises located in the basement of a building located in a commercial area of Kleinburg, with a seating capacity of 44 persons.

On the 22 May, 1979 the Liquor Licence Board proposed to revoke the liquor licence held for the establishment for the following reasons:

- "4. The licence holder is in breach of a term and condition of his liquor licence in that, contrary to Section 5 (2) of Regulation 1008/75 under The Liquor Licence Act, he failed to keep the licensed premises and facilities used by patrons in a clean and sanitary condition, particulars of which are stated in an Advice Notice dated April 27th, 1979, a copy of which was delivered to the licence holder.
5. Having regard to the needs and wishes of the public in the municipality in which the premises is located, the licence holder is not entitled to the licence because of complaints from neighbours and residents of the municipality that excessive noise from music emanates from the tavern and causes disturbance to the neighbours; patrons leaving the tavern molest and interfere

with residents of the area and the patrons use abusive and obscene language and engage in fighting outside the licensed premises; patrons litter the adjoining area with empty beer and liquor bottles and the licence holder is unable to maintain an orderly and efficient operation of the licensed premises."

Upon hearing the submissions of Counsel for the Liquor Licence Board of Ontario, the Licensee and the Kleinburg Area Ratepayers Association and upon hearing the Consent which was filed with the Tribunal by Counsel as aforesaid, and upon the Tribunal satisfying itself that the members of the public other than those appearing on behalf of the Kleinburg Area Ratepayers Association did not oppose the written terms of the aforementioned Consent, the Liquor Licence Appeal Tribunal ordered as follows:

1. That the Kleinburg Ratepapers Association be made a party to these proceedings.
2. That the Order of the Liquor Licence Board dated the 19th day of July, 1979 be revoked forthwith.
3. That terms and conditions be attached to the Dining Lounge Licence issued to Peter Bassels as Licence No. 091072 as follows:
 - (i) That the Licensee be prohibited from having live entertainment in the licensed premises until such time as the Licensee satisfies the Liquor Licence Board of Ontario that the presence of live entertainment in the public premises is not contrary to the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located.
 - (ii) That if the licensee wishes to remove the prohibition with respect to live entertainment he shall apply to the Liquor Licence Board of Ontario for a hearing and the Board shall forward notice of the hearing to the Kleinburg Ratepapers Association and shall, in addition, publicize notice of the hearing in accordance with the procedure set out in Section 6 (3) of the Act and take such further

and other steps to notify the residents of Kleinburg of the hearing as the Board deems fit. The Tribunal further directs the Board to hold the said hearing in Kleinburg, Ontario.

- (iii) That the Licensee shall cause renovations to be made to the licensed premises to ensure that the said premises are sufficiently sound-proofed so that any sounds emanating from the licensed premises are not contrary to the public interest having regard to the needs and wishes of the residents of Kleinburg.
- (iv) That the licensee shall personally manage and supervise the licensed premises.
- (v) That parking shall be provided to the patrons of the licensed premises as follows:
 - (a) The licensee shall provide access to the parking lot at the rear of the licensed premises forthwith,
 - (b) The Licensee shall erect a sign at the front of the licensed premises which is visible from the street and legible in hours of darkness, indicating that patrons should park at the rear of the licensed premises,
 - (c) That the Licensee shall erect a sign on the inside of the licensed premises near the main entrance thereto, advising patrons not to park in the Shopping Plaza parking lot at 10504 Islington Avenue located immediately to the south of the licensed premises.
 - (d) That the licensee shall make all reasonable efforts to lease additional parking spaces in Kleinburg in order to provide adequate parking for the patrons of the licensed premises and if successful in acquiring the additional parking spaces, shall erect signs on the inside and on the outside of the licensed premises, advising patrons of the said parking.

The Tribunal directs the Liquor Licence Board to review the adequacy of the parking provided to patrons of the licensed premises on or before the 1st day of June, 1980 in such manner as the Board deems fit and to take such action as the Board in its discretion deems adequate.

4. That the Liquor Licence Board of Ontario cause inspections of the licensed premises to be made at least once in every two-week period for at least one year commencing on the 17th day of December, 1979 or until this term and condition is removed, whichever event first occurs.

BAVARIAN RESTAURANT & TAVERN

Dining Lounge Licence
issued to
Nowak Enterprises Incorporated
APPEAL FROM SUSPENSION ORDER

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: JOHN R. BELLEGHEM representing Licencee
S. A. GRANNUM representing the Liquor Licence Board

DECISION: SEPTEMBER 27, 1979

Nowak Enterprises Inc. is the Licensee since 3 February, 1978 of premises classified as a tavern and known as Bavarian Restaurant and Tavern, Milton Plaza, Milton.

The licence issued is a dining lounge licence in respect of 3 areas.

On the 12th day of April, 1979 the Liquor Licence Board issued a Notice of Proposal to suspend for a period of 14 days the liquor licence herein for the following reasons:

- " 5. On January 19th, 1979, the licence holder, its employees and agents sold and supplied liquor to persons who were apparently under the age of 19 years, contrary to Section 45 (2) of the Liquor Licence Act, 1975. The names of the persons so served were Merrilyn F. Miller and Pola Gaetan. The said two persons at the relevant time were seated in the north end of the south room of the licensed premises and were consuming alcoholic beverages which had been served to them by an employee of the licensed premises.
6. The licence holder has, through its employees and shareholders, afforded the Board by the past conduct of the said persons, reasonable grounds for belief that the business is not being carried on in accordance with law and with integrity and honesty. "

At the meeting before the Liquor Licence Board on May 30th, 1979 issued its decision,

"that the Licensee is in breach of a term and condition of its 'Dining Lounge' Licence in that it has carried on activities that are in contravention of the aforesaid Act and Regulations appurtenant thereto, the particulars of which are set forth in the 'Notice of Proposal' dated April 12th, 1979.

The Board, therefore, ORDERS that the 'Dining Lounge' Licence issued to Nowak Enterprises Incorporated, in respect of the Bavarian Restaurant and Tavern, be "SUSPENDED", effective at the opening hour on MONDAY, JUNE 18th, 1979 and to continue until the opening hour on MONDAY, JUNE 25th, 1979."

The Liquor Licence Act, 1975 has the following provisions:

" Section 45.

(2) No person shall sell or supply liquor to a person who is apparently under the age of nineteen years, and, in any prosecution for a contravention of this subsection, the justice shall determine from the appearance of such person and other relevant circumstances whether he is apparently under the age of nineteen years.

Section 55

1(a) In addition to any other penalty under this Act, the licence of every person who contravenes subsection 2 of Section 45 shall be suspended for a period of not less than seven days."

Regulation 46 (1) states as follows:

" The following classes of premises are prescribed as premises on which a person under the age of nineteen may enter:

(a) premises for which a dining room or dining lounge licence has been issued. "

The Bavarian Restaurant opened for business in October, 1976 as a family type restaurant within the enclosed shopping mall, with doorways leading into the mall and to the outside. The inside of the restaurant is fully decorated with hand paintings, stained beams against stucco walls, and some hand-hewn tables, "creating a genuine Bavarian atmosphere of "Gemutlichkeit". Breakfast is served from a special menu from 9 a.m. on; it and the extensive regular menu and special children's menu provide for a good and varied selection of food well served to accommodate businessmen at lunch, evening dinner, and families generally. The menus are attractive in appearance and cover a full range of foods. After dinner hours the establishment endeavours "to provide a good-time atmosphere of comraderie and enjoyment." At lunch and dinner all areas have tables set with linen and china. In Area 3 after 9:30 the linen and china are cleared and music provided.

In the evening the patronage is a generally younger, especially on Thursdays, known in Milton as "Bav Night" when 85% of the patrons are under 25.

The matter of underage drinking has been a continuing concern. In October, 1977 the inspector cautioned re underaged persons. In February, 1978 the inspector attended a staff meeting to explain the Liquor Licence Act, with emphasis on underage drinking concerns. On July 10-11, 1978 at the request of the Manager, the Liquor Licence Board team attended the premises to issue Age of Majority Cards. In September, 1978 and January, 1979 the inspector brought complaints respecting underage drinking to the attention of Management though it is to be noted that there was no specific occasion related to occurrences within the licensed premises proper.

On behalf of the licensee there was given in testimony the instructions issued directly to staff by the manager and assistant manager respecting requests for service by persons appearing to be under the required age.

The testimony of the inspector and actions taken by the licensee after the incident upon which the Notice of Proposal is based, indicate that the management could have dealt with the problem more aggressively.

A constable of the Regional Police attended the premises with another officer on the 19th of January, 1979 at about 10:20 p.m. Some 22 persons were on the premises. They checked some 4-6 persons for age and found them to be over 19. They saw 2 young women sitting at a large table with glasses of alcoholic beverages in front of them who appeared to them to be under age.

A check showed that one, by a birth certificate and a SIN card produced, was born on 1 February, 1961, and the other, by a driver's licence produced, was born on 23 December, 1961.

It was not disputed that the waitress who had served them the alcoholic beverage had not requested identification. The waitress testified that in her opinion the young women appeared over 19.

The young women were charged and pleaded guilty to consuming liquor.

Since the decision of the Board, a charge against the licensee under Section 45 (2) was heard on September 6, 1979. The judge who had the 2 women before him ruled "the girls did not appear to be under 19" and dismissed the charge.

In the light of this finding of the judge, and in the light of the fact that the decision of the Board was based upon the allegation of the action of the licensee contrary to Section 45 (2) the Tribunal revokes the decision of the Liquor Licence Board herein.

BEEF BARON TAVERN

Dining Lounge Licence
issued to

Domenico Barletta

APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: JOHN YAREMKO, O.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: BRIAN A. FOSTER representing Licensee
S.A. GRANNUM representing the Liquor Licence Board

DECISION: SEPTEMBER 27, 1979

Domenico Barletta is the licensee No. 091726 and the owner of premises classified as a tavern and known as Beef Baron Tavern, 624 York Street, London. The licence issued is a Dining Lounge Licence Serial #A2424 in respect of a room located on the main floor, south section.

On August 18th, 1979 the Liquor Licence Board issued a Notice of Proposal to attach a term and condition to the dining lounge licence of the above-named establishment that,

"the sale and service of liquor in the establishment shall cease at 10:00 p.m. FOR THE FOLLOWING REASONS:

1. The licensee is carrying on activities that are in contravention of Section 6 subsection (5) of Regulation 1008/75 under The Liquor Licence Act, 1975 and in particular, the total receipts from the sale of liquor in the 'dining lounge' have exceeded the total receipts from the sale of food in each month during the period commencing July, 1977 and ending June, 1978.

The licence holder has filed with the Board a statement of gross sales of food and liquor as follows:

<u>Month & Year</u>	<u>Total Food Receipts</u>	<u>Total Liquor Receipts</u>
Jan-June/77	(figures not submitted)	
July, 1977	\$ 8,333.00 (40%)	\$ 12,583.00 (60%)
Aug. 1977	7,719.00 (39%)	12,142.00 (61%)
Sept. 1977	7,466.00 (38%)	11,987.00 (62%)
Oct. 1977	9,267.00 (41%)	13,154.00 (59%)

Month & Year	<u>Total food Receipts</u>		<u>Total Liquor Receipts</u>	
Nov. 1977	\$ 9,855.00	(44%)	\$ 12,355.00	(56%)
Dec. 1977	9,015.00	(46%)	10,460.00	(54%)
Jan. 1978	8,032.00	(48%)	8,418.00	(52%)
Feb. 1978	(figures not submitted)			
Mar. 1978	"	"	"	"
Apr. 1978	8,467.63	(43%)	10,944.48	(57%)
May 1978	12,403.63	(46%)	14,313.35	(54%)
June 1978	15,126.11	(46%)	17,081.97	(54%)

2. The licensed premises are not under the management and supervision of a person capable of managing an orderly and efficient operation as evidenced by numerous disturbances having taken place on the licensed premises. "

On the 24 October, 1978 the Board initiated a hearing in the matter. The Board did not conclude the hearing but advised the licensee as follows:

"...in view of the submissions made by Mr. Foster on your behalf its "DECISION" would be "RESERVED" at this time, pending the receipt of an audited Financial Statement for the period February 1st, 1978 to December 31st, 1978. In this connection, as you will remember, the Board stipulated that this Statement must be in hand on or before January 31st, 1979, and the findings of the Board at that time would indicate what action, if any, is to be taken in the matter of its 'Proposal'.

Moreover, as you are aware, it was suggested to your Solicitor, Mr. Foster, that he arrange an interview with the local policing authorities in an effort to obtain clarification as to some adverse reports on file relevant to these licensed premises.

For your information, it is the responsibility of the Area Inspector to keep the Board informed as to the status of this operation at regular intervals; however, the onus is on you as Licensee to ensure conformity with the Regulations at all times. "

On the 5 April, 1979 the Board advised the licensee that it proposed to continue the hearing on 17 May, 1979, stating:

"...at your request, the Board extended until March 1st the time for filing the financial statement and the statement was filed on March 2nd, 1979.

The statement shows that the gross receipts from the sale of food for the year ending January 31st, 1979 are \$171,119.00 and the gross receipts from the sale of liquor are \$196,600.00

On March 22nd, 1979 an investigator of the Board attended at the licensed premises and audited the sales of food and liquor for the months of February and March, 1979, a copy of the report is enclosed.

At the Board hearing the Chairman suggested to the licensee that making a food purchase a requirement or reducing his hours on a voluntary basis would certainly aid in attaining the 50/50 ratio.

The licensee has been carrying on a restaurant business at 624 York Street at the corner of King Street since February, 1974. He was previously in the furniture refinishing business. He tore that building down and built a handsome looking restaurant. The operation is a family one with his wife, daughter and son participating. The business was originally operated under the name of The Venetian Gondola as an unlicensed restaurant. An application was made for a Dining Lounge Licence, which was issued approximately one year later in 1975. The name was changed to Beef Baron Tavern. In the beginning the operation was basically a food operation with entertainment and disco on some nights. The volume of business was very low, and operated at a loss of \$40,000 to \$50,000 during its first two years; it was "nip and tuck" that the business would survive.

In 1977 the format was altered radically by the introduction of strip dancer entertainment. Tables and chairs were taken out. The stage was enlarged and a ramp 4' x 25' was introduced in the centre of the room. Chairs were set along the ramp side with tables and booths on both sides of the stage. The performers, 3 in number perform continually from 12 noon to 1 a.m.

to tape music. The cost in 1978 was \$33,000, in 1979, \$58,000.

Upon the introduction of the dancers the volume of business increased dramatically. However, the percentage of receipts from food sales decreased and the percentage of receipts from liquor sales increased.

At the hearing, the Board had before it the following figures:

MONTH & YEAR	TOTAL FOOD RECEIPTS %		TOTAL LIQUOR RECEIPTS %	
January 1978	\$ 8,032.09	49	\$ 8,413.18	51
February 1978	8,524.30	45	10,628.59	55
March 1978	7,874.47	45	9,756.69	55
April 1978	8,467.68	44	10,944.48	56
May 1978	12,403.63	46	14,313.35	54
June 1978	15,126.11	47	17,081.97	53
July 1978	14,994.80	50	14,767.96	50
August 1978	15,070.16	47	17,027.15	53
Sept. 1978	15,047.69	51	14,638.22	49
Oct. 1978	15,917.95	49	16,670.79	51
Nov. 1978	17,202.87	47	19,315.56	53
Dec. 1978	15,713.98	49	16,647.27	51
January 1979	17,470.34	48	18,670.34	52
February 1979	20,142.24	51	19,502.57	49
March 1979	21,861.16	49	22,968.71	51
April 1979	16,796.07	48	17,609.99	52

The report of a Board Investigator, Napolitano, who monitored the operation on March 22, 23, and 24, 1979 referred to a statement by the licensee that for \$1.35 a patron would receive a pint of beer with a 5-gram bag of peanuts. When the amount was entered on the cash register the bartender would punch 74¢ for beer, 54 for food (for the peanuts) and 7¢ tax. Including the amount for the peanuts with food, the ratio for the 3 days was:

	<u>Food</u>	<u>Liquor</u>
March 22	48%	52%
March 23	49%	51%
March 24	46%	54%

A revised computation without the amount for the peanuts was:

	<u>Food</u>	<u>Liquor</u>
March 22	27%	73%
March 23	30%	70%
March 24	10%	90%

A revised monthly computation of the food and liquor ratio excluding the consideration of the peanuts with the food is as follows:

	<u>Food</u>	<u>%</u>	<u>Liquor</u>	<u>%</u>
Feb.	\$6,271.85	25	\$19,003.03	75
March	9,620.44	21	35,209.43	79
April	6,949.71	20	27,456.35	80

On the 17th May, 1979 the Board made its decision:

".... The Board finds that the licensee is in breach of a term and condition of his 'Dining Lounge' Licence in that he has carried on activities that are in contravention of the aforesaid Act and Regulations appurtenant thereto, the particulars of which are set forth in the 'Notice of Proposal' dated August 18th, 1978, that is, the sales of alcoholic beverages during the period commencing July, 1977 and ending June, 1978 and in fact, to the present date have exceeded the total receipts from the sale of food,

and

the licensed premises are not under the management and supervision of a person capable of managing an orderly and efficient operation as evidenced by numerous disturbances having taken place on the licensed premises. "

and ordered

"that commencing on MONDAY, JUNE 4TH, 1979 there shall be attached to the licence the "TERM AND CONDITION" that the sale and service of liquor in the 'Dining Lounge' shall CEASE at 10:00 daily, and continue in effect until such time as the requirements of Section 6 subsection (5) of Regulation 1008/75 are satisfied."

The restaurant is situate in an area adjacent to a commercial and industrial area, and next to a residential area. It has a potential to draw a variety of patrons. To the present the bulk of clientele has been a working clientele with jeans and sweat shirt more prominent than shirts and ties. Many of the patrons arrive in cars.

The Liquor Licence Board inspector who visited the premises testified that he had discussed the food/liquor ratio many times with the licensee, who was very cooperative and who did take various steps to increase food sales.

Outside there is a sign which proclaims "Giant Screen - Exotic Dancing - Good Food" Initially, the sign had said - "Gourmet Dining". A 8' x 6' prominent sign on a residence at the King Street entrance sets out the Beef Baron's menu.

Menus which from the beginning offered a variety of first-class items with varied prices were changed both as to content and price (geared to the clientele) to attract more food consumption. Daily specialties were put forth and signs related thereto are within the premises.

The freezer is well stocked and there is a supply of fresh foods to fulfill the menus. There are adequate facilities to prepare the food and adequate staff to serve. The licensee tried to get his staff to plug food, explaining the significance of the balance, and offered daily and monthly prize incentives.

The restaurant enjoys a good trade all day. During lunch hours the tables are set for eating and menus are handed out. After 2:30 the table cloths are left on; there is less menu offering. A lot of steaks are sold but most of the sales are of roast beef sandwiches and pizza, and the like, with the daily specials of stew, etc. In the evening the food consumed is pizza, beef dips, etc.

The inspector was of the opinion that the priorities of the patrons coming to the premises were to (1) drink, (2) watch the girls (or vice versa) and (3) to eat.

At the beginning of 1979 the licensee introduced the 'peanut package' as set out in the investigator's report to enlarge receipts from the sale of food. Though sales increased, this detracted from the sale of regular foods. That combination ceased after the May Board hearing.

At the Tribunal hearing, Counsel for the Board did not pursue the second allegation set out in the Notice of Proposal and referred to in the Board's decision, but restricted his submission to the food/liquor ratio.

The following figures were filed:

	<u>Food</u>		<u>Liquor</u>	
May 1979	\$ 7,453.33	24%	\$ 23,082.62	76%
June 1979	9,834.85	35%	22,380.44	65%
July 1979	8,524.85	27%	22,353.99	73%

After the Board hearing the licensee, whose presence is significant to the operation, had become seriously ill and only recently returned to active participation.

Section 10 subsection (1) of the Liquor Licence Act, 1975 states:

"The Board may at any time review a licence on its own initiative and attach such further terms and conditions as, it considers proper to give effect to the purposes of this Act."

One of the purposes of the Act is the licensing of restaurants to sell liquor. A restaurant is defined in Regulation 1 (n)

" 'restaurant' means an establishment which has full kitchen facilities for the preparation of meals and is engaged in the sale and service of meals to the public..."

It is clear that the chief operating characteristic of such an establishment is that it "is engaged in the sale and service pf meals to the public."

Where a dining lounge licence is issued to a restaurant, Regulation 6 (5) requires

"(a) the total receipts from the sale of liquor in any month shall not exceed the total receipts from the sale of food in the same month; "

In consideration of action to be taken in respect of non-compliance with the term and condition of a dining lounge licence as set out in Section 6 (5) (a) the Tribunal has set out certain criteria to serve as guidelines:

1. The operation by the licensee is a bona fide restaurant (food) operation.
2. Reasonable efforts are being made by the licensee to meet the requirements of the Regulation.

3. Reasonable success toward the goal of meeting the requirements in a reasonable period of time is being had.

In respect of Beef Baron Tavern the facts as found by the Tribunal show:

The operation was initially a restaurant within the meaning of the section and as generally accepted. However, the change in format of the restaurant and the introduction of strip dancers changed the operation completely. It became a place of entertainment and of service of alcoholic beverages. All the technical requirements for a restaurant continued - appropriate and good menus, adequate and good quality of food, adequate facilities and good staff for preparation and service at all times. However, instead of liquor and entertainment being an adjunct to the service of food, food has by and large become an adjunct to the provision of liquor and entertainment. Clearly the entertainment provided was more conducive to attracting drinking than dining patronage. The changes introduced by the licensee after the introduction of entertainment did not bring about a condition where the operation can be said to be within the meaning of the Regulation. Though the requirements thereof are there, the environment is other than that of a food operation.

With respect to the efforts of the licensee, they must be reviewed in the light of the fact that the original operation had been changed into something different by reason of the introduction of the strip entertainment. It is not that the licensee paid no attention to the requirement of the food/liquor ratio, nor that he made no attempts in respect thereof. The Tribunal makes no judgment on the kind of entertainment provided. When the requirements of the regulations are met, the entertainment and its nature are not relevant. However, when the regulations are not met and where it is clear that the fact that they are not met are directly related to the entertainment and its nature, it is a relevant factor. Similarly with the idea of the combination of beer and peanuts. The Tribunal does not rule that peanuts are not food. Such a finding is not necessary when the method of service of peanuts not only does not add to the consumption of food in the licensed premises within the context of 'sale and service of meals' but reduces it and adds to an environment contrary to that associated with a restaurant. The Tribunal realizes that those figures cited for computation of food receipts, including and excluding peanuts, are not absolutely accurate, but they are indicative of what was happening in respect of the sale of 'meals'. While the general format introduced in 1977 continued, the efforts of the licensee could not

be considered reasonable where they were not successful.

The success of the efforts of the licensee have been minimal. It is true that the imbalance has not been great throughout the period. However, the early discussions with the inspector about the imbalance should have made the licensee resort to more than the efforts exerted. The Notice of Proposal was issued in August, 1978; the hearing initiated in October, 1978 was not concluded until May, 1979, and there was no significant change in the interim. The licensee knew what had brought about the great change and should have acted accordingly. The change of the operation in 1977 brought about a clientele which in large measure patronizes the premises primarily for a combination of entertainment and consumption of liquor. The operation continues in the format, with only some changes in respect of the food aspect.

The Tribunal is not unsympathetic to the circumstances in which the licensee finds himself by reason of his illness. However, the Tribunal is of the opinion that the licensee had ample time to take such measures as would be required to meet the balance, or in any event, to indicate that compliance could be had within the format adopted. The time available to the licensee was ample for the institution of measures now being contemplated.

There are a dozen or so restaurants in a close radius; all meet the ratio and only one has exotic dancers.

The Tribunal is of the opinion that the Board had the authority under Section 10 (1) to attach the term and condition set out in its decision of the 17th day of May, 1979 and properly exercised that authority.

Since the premises of the licensee are classified as a restaurant in respect of which a Dining Lounge Licence is issued, the Board can attach a condition to ensure that the restaurant operated by the licensee "is engaged in the sale and service of meals to the public", and that the total receipts from the sale of liquor in any month shall not exceed the total receipt from the sale of food in the same month. Since the licensee is operating an establishment which is engaged in the provision of entertainment which in the evening retains patrons for the purpose in the main of consumption of alcoholic beverages the Board can impose a limitation which will make the operation one more likely to conform to the purposes of the Act.

The Liquor Licence Appeal Tribunal finds that the licensee has been and continues to be in contravention of Regulation 6 (5) (a).

Accordingly, THE LIQUOR LICENCE APPEAL TRIBUNAL HEREBY CONFIRMS the decision of the Liquor Licence Board of 17 May, 1979 for the reasons herein and DIRECTS the Board to set the effective date of the commencement of the attachment of the Term and Condition.*

*Note: The above decision was appealed to the Supreme Court of Ontario (Divisional Court).
The appeal had not been concluded at the time of this publication.

BLUESCHOONER RESTAURANT

Dining Lounge Licence
issued to
Blueschooner Ontario Limited
APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: JOSEPH CORNACCHIA representing Licensee
S.A. GRANNUM representing the Liquor Licence Board

DECISION: MARCH 28, 1979

Blueschooner Ontario Limited is the licensee (#0204327) of the premises classified as a restaurant known as Blueschooner Restuarant located at 1130 Queen Street East, Toronto.

The licence issued is as follows:

Dining Lounge Licence Serial #DL 2079
In respect of a room located
Main Floor: North Section - Capacity 105

The president is Manfred Ruhland. The property is owned by Luman Holdings Limited with which Manfred Ruhland is associated. From October, 1976 to February, 1977 there was operated on the premises a licensed dining lounge, "Agouti Restaurant" in which Mr. Ruhland had an interest. From April, 1977 to May, 1978 there was operated on the premises a licensed dining lounge, "Canada's Grand Ole Opry Restaurant" under a lease. The operation came to an end upon court action by Luman Holdings as landlord. The licence was at that time transferred to Blueschooner Ontario Limited. Mr. Ruhland's interest in the operation is that of an investment and his role has been to arrange for management. He has not been involved in the day-to-day affairs thereof.

Terms and conditions of the licence are set out in Ontario Regulation 1008/75 including the following relevant provision:

Section 6

- (5) In each premises for which a dining room or dining lounge licence is issued,

(a) the total receipts from the sale of liquor in any month shall not exceed the total receipts from the sale of food in the same month.

On the 4th day of October, 1978 the Liquor Licence Board issued a proposal to attach to the licence.

"... A TERM and CONDITION that the sale and service of liquor in the establishment shall cease at 10:00 p.m.

FOR THE FOLLOWING REASONS:

The licensee is carrying on activities that are in contravention of Section 6, subsection (5) of Regulation 1008/75 under The Liquor Licence Act 1975 and in particular, the total receipts from the sale of liquor in the dining lounge have exceeded the total receipts from the sale of food as follows:

<u>Month & Year</u>	<u>Total Food Receipts</u>		<u>Total Liquor Receipts</u>	
June 1978	\$ 6,606.07	25%	\$ 19,601.07	75%
July 1978	5,768.60	25%	17,073.65	75%
Aug. 1978	3,825.69	28%	9,968.18	72%
Sept. 1978	8,681.60	32%	18,227.14	68%

A hearing was requested and notice thereof for 2 p.m. on November 9, 1978 was sent to the licensee at the above address. Mr. Ruhland did not attend until 2:30. Another hearing having commenced, Mr. Ruhland was advised at 4 p.m. that the meeting would be re-scheduled. A new notice for 11:15 a.m. 4 December was sent to the licensee at the said address. At the hearing no one appeared for the licensee and the Board issued an order as follows:

"for the reasons set forth in the aforementioned 'Proposal' a 'TERM and CONDITION' be attached to the 'Dining Lounge' Licence issued to Blueschooner Ontario Limited, in respect of the Blueschooner Restaurant, whereby the sale and service of alcoholic beverages in these premises shall CEASE at 10:00 p.m. daily, commencing TUESDAY, JANUARY 2ND, 1979, and to continue until such time as the premises comply with Section 6 subsection (5) of Regulation 1008/75 under The Liquor Licence Act, 1975 and the Board makes a further Order to the contrary."

Corrected figures for the months of August and September, 1978 and subsequent figures filed with the Tribunal are as follows:

<u>Month & Year</u>	<u>Total Food Receipts</u>		<u>Total Liquor Receipts</u>	
August 1978	\$ 8,681.60	32%	\$ 18,227.14	68%
September '78	8,362.39	33%	17,068.64	67%
October '78	8,809.39	34%	16,927.06	66%
November '78	7,886.72	34%	15,183.18	66%
December '78	7,221.58	34%	13,928.90	66%
January 1979	6,065.32	30%	13,903.56	70%
February '79	5,926.98	32%	12,571.43	68%
March '79	5,486.35	36%	9,900.14	64%

The restaurant is situate in a mixed industrial-commercial and low-income residential area. There is a Scottish specialty restaurant some 5 blocks to the east, and a steak house and tavern some 5 blocks to the west. From the outside the appearance is not that of a restaurant as ordinarily would be expected in the neighbourhood.

Inside there is little about the atmosphere or environment that is that of a dining (food) establishment. The kitchen, food service facilities, and menu can best be described as minimal. The food preparation facilities consist of a 6-burner stove, a grill and a freezer. The menu consists of a bulletin listing any special(s) together with listed items such as Steak on a Bun, Steak, and Sandwiches. The prices are very low. The patrons can place the order at a table and have the same brought to them or go to a vestibule where there is an opening to the kitchen and place the order to be brought to them. Personnel for food service appear to be minimal and unknowledgeable in the service available. Initially there were no tables set up for dining. More recently certain tables have been separated and covered with table cloths. The remainder are still bare and appear to be set up for drinking purposes only. The premises are not open for breakfast. Patrons attend generally to drink and not to eat. There are more people after 8:30 than at meal times and after 9:30 on Thursday, Friday, and Saturday the premises are filled. The behaviour of patrons to each other has been one of harassment.

The situation was inherited from the predecessor licensee. Certain figures in respect of that predecessor licensee are as follows:

<u>Month & Year</u>	<u>Total Food Sales</u>		<u>Total Liquor Sales</u>
Sept. 1977	\$ 3,538.44	18%	\$ 19,657.99
Oct. 1977	4,009.05	18%	22,272.48
Nov. 1977	3,889.60	17.9%	21,608.90

The Liquor Licence Board had issued a proposal to suspend, and to restrict liquor sales based on breaches of the Regulation relating to food service including food receipts, and Mr. Ruhland was aware of the proceedings.

A Liquor Licence Board inspector recited his attempts in various discussions with Mr. Ruhland to bring about a change in the ratio, warning him that the balance had to be reached or he would be in difficulty.

An investigator with the Board testified as to surreptitious visits made to the premises. On the 19th of June, 1978 at 12:20 p.m. he sat in the front section. The premises were not set up for eating; there were no salt and pepper shakers on the table, and no menus. He asked the waiter for food; he had to refer to a cook in the kitchen to find out what was available. He was advised that sandwiches were available and that they were expecting new eating facilities. There were some 18 patrons present, all drinking beer and liquor. At the time a pool table was being used continuously and there was a notice respecting a tournament.

On October 5th, 1978 at 11:05 p.m. he sat in the north section. Some 50 patrons were present. A four-piece band was playing. The kitchen was open, and a sign posted advertised a few items. There was advertised a gong show and a snooker tournament.

On the 24th of November, 1978 he attended at 12:01 p.m. There were 35 patrons present, all drinking. Three were having cheeseburgers. A young girl appeared to be acting as cook and she was looking after a child at the same time. She was joined by someone who appeared to be grandmother of the child. There was a full menu posted on the south-east wall. During the visits, all persons present appeared to treat the establishment as a lounge.

The investigator had had occasion to visit the premises when the previous licensee was in operation. He had been on the premises January 20th, 1978 at which time there was a menu on the wall and food available, but of the 35 patrons present, none were eating. His opinion was that the transfer of Blueschooner Restaurant had brought about very little change in its appearance, in its clientele, and in its operation, though there was a cosmetic clean up.

Mr. Ruhland testified that he had tried to institute changes to bring about the proper ration of food and liquor. He had instructed his staff that food was an integral part of the operation and pointed out to them that the operation was not a public house. Necessary equipment which had deteriorated under

the previous operator was repaired. He was of the opinion that normal solutions to the problem were not feasible. He indicated his desire and attempts to create an atmosphere of a restaurant and to get rid of the image of a local hangout. He attempted a buffet experiment but much of the food became unconsumable. He tried placing menus, cutlery, glasses on the tables but the behaviour of the patrons was such that he could not continue this. Accordingly, he reverted to the bulletin menu and utensils were brought out as required. He changed staff continuously because they would not carry out the operations properly. There have been three cooks in recent weeks.

He had recently put the operation in the hands of James Guntripp in whom he had confidence. Mr. Guntripp testified as to recent changes made and as to hopes for the future. He thought that he was on the verge of creating more of a family type operation whereby food sales would be increased. He had made physical changes, introduced a variety of specials, and anticipated catering to events. On behalf of the licensee it was stated that more time was necessary to bring about compliance with the regulation.

With reference to the requirement respecting receipts from food sales, the Tribunal has set down certain criteria as guidelines if more time is to be granted to a licensee to achieve compliance as follows:

1. the operation can be characterized as a bona fide restaurant (food) operation;
2. reasonable efforts are being made by the licensee;
3. reasonable success in a reasonable period of time is being had.

In respect of the operation of Blueschooner Restaurant the facts as found by the Tribunal are:

1. the operation falls considerably short of what is generally accepted as the operation of a restaurant. The appearance both outside and inside, the facilities for the preparation and the service of food, and the promotion of the consumption thereof, are all minimal;
2. the efforts and innovations since the licence was transferred cannot be described as reasonable. Though Mr. Ruhland was described as trying, steps taken fell far short of what the situation required.

No real effort was made until very recently. This is a situation where the person with the financial interest in the licence does not give personal supervision and attention. Reliance solely on employed management should have ended long ago particularly in the light of an awareness of the previous operation and of continuing experience.

3. Though the change from the previous licensee was noticeable the increase in receipts from the sale of food can only be described as minimal. That result is directly related to the shortcomings in meeting the criteria listed in 1 and 2.

Apart from the steps taken on the eve of the Tribunal hearing there is little in the performance of the licensee since the Board order that would indicate that the imbalance would cease within a reasonable period of time. The licence issued in respect of these premises is that of a dining lounge, but the operation throughout the day continues to be that of a lounge. This is especially so in the late evening when much of the receipts from the sale of liquor is generated.

The Tribunal finds that the licensee has been and is in breach of the term and condition of the licence set out in Ontario Regulation 1008/75 Section 6 Subsection (5) paragraph A.

Accordingly, the Liquor Licence Appeal Tribunal confirms the decision of the Liquor Licence Board of the 4th of December 1978 attaching a term and condition to the dining lounge licence issued to Blueschooner Ontario Limited in respect of the Blueschooner Restaurant whereby the sale and service of alcoholic beverages in the premises shall cease at 10:00 p.m. daily to continue until such time as the premises comply with Section 6 (5) of the Regulation 1008/75 under the Liquor Licence Act, 1975 and the Board makes a further order to the contrary.

The Tribunal orders that the said term and condition shall become effective on a date to be set by the Liquor Licence Board.*

*Note: The above decision was appealed to the Supreme Court of Ontario (Divisional Court). The appeal had not been concluded at the time of this publication.

BORDEAUX RESTAURANT

Dining Lounge Licence
issued to
Bordeaux Restaurant Limited
APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON, Q.C. and
BARBARA J. SHAND, MEMBERS

COUNSEL: M.J. MITCHELL, Q.C. representing Licencee
S.A. GRANNUM representing the Liquor Licence Board

DECISION: JUNE 27, 1979

Bordeaux Restaurant Limited is the licensee, No. 020769 and the owner of premises classified as a restaurant and known as Bordeaux Restaurant, 16 Bimbrok Road in the Borough of Scarborough. The licence issued is a Dining Lounge Licence, Serial #A2661 in respect of a room located in the basement, West Section, Capacity 77 persons.

The officers and directors of the Corporation are:

Cvetko Kocovski	President
Mitko Starkovski	Vice-President
Krste Stacevski	Secretary
Slave Sukovski	Treasurer

The premises were licensed on September 19, 1977. From August, 1978 to the Board notice, the hours of operation of the premises were:

Monday to Friday	- 4 p.m. to 1 a.m.
Saturday	- 5 p.m. to 1 a.m.
Sundays	- closed.

On January 24th, 1979 the Liquor Licence Board issued a Notice of Proposal to attach a term and condition to the dining lounge licence of the above-named establishment that

"the sale and service of liquor in the
establishment shall cease at 8:00 p.m."

FOR THE FOLLOWING REASONS:

- "5. The licence holder is carrying on activities that are contrary to Section 6, subsection 5 of the regulations under The Liquor Licence Act 1975 in that the total receipts from the sale of liquor have exceeded the total receipts from the sale of food in each of the months October, November and December, 1978.
6. The licence holder has filed with the Board the following statements of sales of food and liquor:

<u>Month & Year</u>	<u>Liquor Receipts</u>	<u>%</u>	<u>Food Receipts</u>	<u>%</u>
September 1978	\$ 4,098.68	50	\$ 4,186.80	50
October 1978	4,502.00	57	3,430.83	43
November 1978	4,001.30	52	3,800.20	48
December 1978	2,406.65	59	1,691.48	41

7. An audit by the Board's investigator of the guest checks revealed the following sales for September, November and December, 1978:

<u>Month & Year</u>	<u>Liquor Receipt</u>	<u>%</u>	<u>Food Receipts</u>	<u>%</u>
September 1978	\$ 3,832.52	61	\$ 2,401.02	39
November 1978	5,330.63	73	1,928.18	27
December 1978	3,406.58	81	790.80	19

8. The information filed by the licence holder differs from the results of the audit conducted by the Board's investigator."

On the 25th January, 1979 the Licensee's solicitor advised that the Bordeaux Restaurant had changed its closing hour to 10 p.m. Monday to Thursday.

At a meeting held before the Liquor Licence Board on the 13th March, 1979 to consider its proposal, the Board issued its decision:

"effective Friday, March 30th, 1979, a 'TERM and CONDITION' will be attached to the 'Dining Lounge' Licence issued in respect of the Bordeaux Restaurant whereby the sale and service of liquor shall CEASE at 8:00 p.m. daily;

moreover, the said 'TERM and CONDITION' will continue until such time as the Licence Holder maintains records that are to the satisfaction of the Board and indicate conformity with Section 6 subsection (5) (a) and (b).

Additionally, the Board directed that the Licence Holder must implement a system of bookkeeping whereby any member of Board staff can enter the premises and be provided with factual figures relevant to the food and liquor sales of these licenced 'Dining Lounge' premises."

The licensee appealed the said decision and the Tribunal has confined its hearing to the issue of the particular decision. Counsel for the licensee did not attack the decision in its entirety but requested a review of the severity of the Board's decision.

At the Tribunal hearing, figures since September, 1977 together with the following figures filed with the Board were presented:

<u>Month</u>	<u>Liquor Receipts</u>	<u>Food Receipts</u>
March/79	\$ 3,975.00	\$ 5,006.00
April/79	628.00	2,022.00
May/79	6,252.00	7,114.00
TOTAL:	10,855.00	14,142.00

The low figure for liquor receipts during April was due to no liquor sales being made during April 1-22.

The premises occupy the full basement of a small commercial building set back some few feet from Eglinton Avenue on the west side of Bimbrok Road. The setback is the vacant land attached to a service station at that northwest corner. Across the street there is also a commercial site. The upper floor of the building is occupied by 4 commercial operations. Immediately to the north of the building commence residences on both sides of the street on 40' lots. There is no 'insulation' or 'barrier' between the commercial building and the residences. The premises have a large sign BORDEAUX RESTAURANT, and on a notice board the premises are designated as Bordeaux Disco.

None of the shareholders were fully engaged in the restaurant operation: three participated on a part-time basis assisting in the kitchen and as bar-tenders. Up until the Tribunal hearing, the operation had been in the hands of a waitress. None of the staff had received training in the carrying out of the restaurant business in accordance with the Act and Regulations.

From the beginning the licensee had difficulty in carrying out the operation as a restaurant whose primary function was the service of food. There was considerable delay in obtaining the permit necessary for the service of food from the Metropolitan Council. The operation did have full kitchen facilities: a 4-burner stove, a charcoal broiler, a 3-compartment sink, and freezers. When examined by Board representatives on various occasions the freezer contained a fair amount of food, and the cook purchased fresh vegetables and meat almost every day. However, though the tables were covered with table cloths they did not have place settings, nor did they have menus. The waitresses did not present a menu to customers, and if anyone wished food they had to ask what was available.

Sometime late in 1978 a steam table was installed, and a buffet was made available at a price of \$3.00. The buffet consisted of a hot special every day, together with salads. The patrons could go to the buffet table and help themselves, and on request obtain cutlery from one of the waitresses. Board representatives on their visits saw in the daytime few patrons, and little food being served. As late as March, 1979 patrons paid little attention to the salad bar.

There was little effort made on the part of staff to promote the consumption of food. The waitresses were mostly concerned with the service of liquor; they also performed as strip dancers.

From Monday to Thursday the clientele were in the main working men who patronized the premises for a drink and to watch the entertainment. On Fridays and Saturdays the clientele were young people; the emphasis was on 'disco' entertainment which attracted the young people and proceeded into the early hours of the morning.

Neighbouring residents at hundreds of feet distant complained of the disco sound of music which prevailed well past midnight through the early hours; the continuous music portrayed to them the entertainment aspect of the operation. Residents expressed their opinion that the external activity at, and 'noise' emanating from the Bordeaux was not that which they ordinarily associated with a restaurant.

Latterly, in order to attract more business the proprietors arranged a male strip tease performance as a Saturday matinee between 12 noon and 3 p.m. An advertisement in The Toronto Sun 2 columns by 7" was headed "Bordeaux Restaurant Presents Mr. Tease" and next to an almost totally undressed posing male there was the following under a heading: "Live on Stage"

- " - Mr. Nude International
- Winner of the Macho Man contest
- North America's No. 1 Male Dancer
- No. 1 King of Turn On"

The attraction brought considerable business including a considerable consumption of food.

Section 10 subsection (1) of the Liquor Licence Act, 1975 states:

- " The Board may at any time review a licence or permit on its own initiative and attach such further terms and conditions as, it considers proper to give effect to the purposes of this Act."

This power of the Board is in addition to its power under Section 11 of revocation, suspension, or refusal to renew.

One of the purposes of the Act is the licensing of restaurants to sell liquor. A restaurant is defined in Regulation 1 (n)

- " 'restaurant' means an establishment which has full kitchen facilities for the preparation of meals and is engaged in the sale and service of meals to the public...."

It is clear that the chief operating characteristic of such an establishment is that it "is engaged in the sale and service of meals to the public". Further, where a dining lounge licence is issued to a restaurant, Regulation 6 (5) requires

- (a) "the total receipts from the sale of liquor in any month shall not exceed the total receipts from the sale of food in the same month, and

- (b) a daily record showing the sales of liquor and food shall be maintained. "

In consideration of compliance with the term and condition of a dining lounge licence as set out in Section 6 (5) (a), the Tribunal has set out certain criteria to serve as guidelines.

1. The operation by the licensee is a bona fide restaurant (food) operation.
2. Reasonable efforts are being made by the licensee to meet the requirement of the Regulation.
3. Reasonable success toward the goal of meeting the requirements in a reasonable period of time is being had.

In respect of the Bordeaux Restaurant, the facts as found by the Tribunal show:

1. The operation for some considerable period of time after its opening fell far short of the definition of restaurant in Regulation Section 1 (n), and as to what could be reasonably accepted as a bona fide restaurant in the ordinary understanding of that term. As late as March 30th, 1979 patrons seemed to be on their own so far as the service of food was concerned. Only recently have tables been set, menus available (printed since March 13) and proffered to patrons, and meat dishes and sandwiches made apparent.

2. With respect to the efforts by the licensee, it is obvious that 'absentee ownership', part-time and from-time-to-time participation by the shareholders, lack of continuous proprietor supervision and the leaving of management to a waitress, did not indicate reasonable efforts on the part of the licensee. The individuals involved are cooperative and willing to assist, but that is not sufficient. Only recently has consideration been given to the participation of a new shareholder on a fulltime management basis. The Tribunal does not view the resort to a male strip tease entertainment on Saturday matinee as being a reasonable effort to meet the requirements of the Regulation, for the efforts must be directed towards the operation of a restaurant.

The nature of the advertising indicates that the operation is of a place of entertainment rather than a restaurant; the emphasis is on entertainment by female strip tease performers

from Monday to Thursday, and disco music on Friday and Saturdays.

It is noted that sales were recorded as follows:

	<u>Liquor</u>	<u>Food</u>
Saturday, May 12, 1979	\$ 492.00	\$397.40
Saturday, May 19, 1979	491.00	364.00

The figures reflect the nature of the operation on those days.

3. With respect to the reasonable success of meeting the requirements in a reasonable period of time, the Tribunal notes the lack of diligence of the licensee in taking steps with respect to Items 1 and 2. It is still difficult to establish that proper and accurate figures are available for the determination of compliance with the Regulations. The original records kept were meagre and primitive, and did not lend themselves either to a ready converting to records required by the Board or to ready verification as to actual receipts from various items.

The discrepancy shown by the audit by the Board's investigator for the months of October, November and December, 1978 in respect of the figures filed by the licensee cast some doubt on the validity of these figures presented to the Board right from the beginning, and on figures filed with the Tribunal which show a proper ration for 11 out of the 14 months.

When a more suitable record book was initiated after discussions with the inspector there was still a discrepancy between actual receipts and the record thereof. It is significant that an entry for food on the 30th of November, 1978 in the new book did not correspond with the food checks of that date which were \$50.70 as compared to the entry of \$118.25.

The Tribunal is of the opinion that sufficient evidence has been brought forth to raise doubt as to the validity of the receipts recorded under the Regulations as being from the sale of food during the term of operation to date. The continuing effect of the new record keeping and bookkeeper have yet to be demonstrated. The Tribunal is of the opinion that the licensee has had ample opportunity to demonstrate a capability of operating a restaurant in keeping with the Regulations.

The Tribunal is of the opinion that the Board has the authority under Section 10 (1) to attach the term and condition

set out in its decision of the 13th day of March, 1979, and properly exercised that authority.

Since the premises of the licensee are classified as a restaurant in respect of which a Dining Lounge Licence is issued, the Board quite properly can attach a condition to ensure that the restaurant operated by the licensee "is engaged in the sale and service of meals to the public", and that the total receipts from the sale of liquor in any month shall not exceed the total receipts from the sales of food in the same month. Since the licensee appears to be operating an establishment which during Monday to Thursday in the night hours is engaged in the provision of strip tease entertainment, and during Friday and Saturday is engaged in the provision of disco entertainment, the Board can impose a limitation which will make the operation one which conforms with purposes of the Act.

The Tribunal is of the opinion that the judgement of the Board as to what was necessary in the administration of the provisions of the Act and Regulations should not be altered, for to accede to the licensee's request to close at 10 p.m. Monday to Thursday and to 1 a.m. on Friday and Saturday would do little to alter the nature of the operation.

The operation of Bordeaux Restaurant has fallen far short of being the kind of operation contemplated for a restaurant by the Act. Not only has the emphasis been on the provision of entertainment but the nature of the operation has brought about a clientele which patronized the premises primarily for that entertainment and for the consumption of liquor. The operation with its emphasis on entertainment and liquor and the little change in respect of the sale and service of food aspect, continues to the present.

Accordingly, The Liquor Licence Appeal Tribunal hereby confirms the decision of the liquor Licence Board of 13 March, 1979 for the reasons herein.*

*Note: The above decision was appealed to the Supreme Court of Ontario (Divisional Court). The appeal had not been concluded at the time of this publication.

CHRISTOPHER'S STEAK HOUSE RESTAURANT

Dining Lounge Licence
issued to
Stauros Christopher Samartgis
APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON, Q.C., and
BARBARA J. SHAND, MEMBERS

COUNSEL: JEFFREY L. EASON representing the Licensee
S.A. GRANNUM representing the Liquor Licence Board

DECISION: NOVEMBER 2, 1979

Stauros Christopher Samartgis is the Licensee ($\frac{1}{2}$ 020707) of the establishment classified as a restaurant located at 26 Melanie Drive, Mississauga.

After a hearing the Board found that the total receipts from the sale of liquor have exceeded the total receipts from the sale of food and ordered:

"a "TERM and CONDITION" to be attached to the 'Dining Lounge' Licence whereby the sale and service of liquor shall CEASE at 10:00 p.m. daily; moreover, the said "TERM and CONDITION" to continue until such time as the Licence Holder maintains records that are to the satisfaction of the Board and indicate conformity with Section 6 Subsection (5)(a) and (b)."

At the hearing before the Tribunal Counsel for the Board and the Licensee filed corrected figures as follows:

<u>Month & Year</u>	<u>Liquor Sales - %</u>	<u>Food Sales - %</u>
October 1978	\$ 10,171.00 50	\$ 10,032.85 50
November 1978	17,076.00 51	16,556.25 49
December 1978	17,296.00 53	15,286.65 47
January 1979	11,101.00 52	10,407.15 48
February 1979	15,803.00 54	13,427.70 46
March 1979	22,288.00 58	16,468.50 42
April 1979	20,039.00 59	14,185.60 41

<u>Month & Year</u>		<u>Liquor Sales - %</u>		<u>Food Sales - %</u>	
May	1979	\$ 23,257.00	58	\$16,995.50	42
June	1979	26,939.00	59	18,884.15	41
July	1979	24,164.00	55	20,134.00	45
August	1979	26,579.47	51	26,416.55	49
September	1979	26,729.10	48	29,522.40	52

No evidence was lead to indicate that there was an issue or question involved respecting the condition of the premises or the operation of the same and the only issue to be decided was compliance with Section 6, Subsection 5 (of Regulation 1008/75).

The restaurant was one of the largest in the Brampton area and catered to the workers and labourers from the surrounding factories and industrial park. There was a very good lunch trade during the work week because the establishment had strippers for entertainment beginning at the noon hour. The restaurant is described as a "fast food type operation" and not a restaurant where the family would be expected to attend.

The Restaurant was well maintained and there were adequate supplies of food on hand in the freezer and cooler in order to provide a good selection to the customers. The menu provided a good selection of choices in a medium price range, ranging from sandwiches to three course meals.

All of the tables were covered with tablecloths and cutlery was in place during the mealtime periods. The restaurant was clean in its appearance and there was no criticism of that portion of the operation.

Food checks or order forms were not in use by the waitresses and the only permanent record of sales whether it was food or liquor was the cash register tape.

At the hearing before the Tribunal, a board investigator expressed surprise at the figures filed by the Licensee to the end of September, 1979 since his visit had indicated to him that it was unlikely that any balance would be achieved in the food/liquor ratio.

Christopher Samartgis testified that he worked fulltime at the restaurant and had had a difficult time in making ends meet following the opening of the restaurant. He started out with another partner but soon had to buy him out which meant that the available capital was completely depleted and funds were in short supply. He states that he experimented with country/western music, rock and roll music and then went to dancers in the summer of 1978.

He told how he passed out some 72,000 fliers to local residents in a bid to increase business and as a result was able to dramatically improve his gross revenue picture. The figures filed with the Board indicate that he was successful in this regard in that he at least tripled his gross revenues if one is to compare the summer months of 1977 to the summer months of 1978.

Mr. Samartgis indicated that his busiest time is lunch hours with the Thursday/Friday crowds being upwards of some 800 to 900 people in total. Mr. Samartgis further indicated that he was cognizant that his food/liquor ratio was a problem and attempted to find ways to improve it. He considered using a cover charge but rejected that idea in favour of a food coupon. Mr. Samartgis introduced into evidence one of his food coupons and testified that it is sold to patrons as they enter the premises for \$1.00 each and are used as a credit towards the purchase of food. Mr. Samartgis indicates that the food coupons are not necessarily used immediately by the patrons who purchase the same but that experience has told him that of the first 10,000 coupons which he printed with very few exceptions virtually all of them were ultimately accounted for in the purchase of food. Mr. Samartgis indicated that if anyone refused to purchase a food coupon then they would still be allowed entry to the premises but that the staff would insist on the purchase of at least \$1.00 worth of food. The \$1.00 paid for the food coupon is put through the cash register only when the food is actually purchased by the customer.

Mr. Samartgis indicated that his food coupon system has had a significant multiplier effect on his food business because in most cases a patron will buy something in excess of \$1.00. He testified that this has also had a dramatic effect on his gross food sales, a fact which is amply corroborated by recent figures filed with the Board and with the Tribunal.

Mr. Samartgis was questioned as to his record keeping and indicated that he did not give food checks out because he had bad experiences with people walking out of the door and preferred that the waitresses collect cash or credit card vouchers when serving the food. He explained that the waitresses punched the total for food and liquor through the cash register when the order was placed and that at the end of the shift the waitresses' money was handed in and reconciled to the cash register tapes. The Tribunal notes that the system used is simplistic to say the least and leaves a lot to be desired as far as a satisfactory system of record keeping is concerned and may well have contributed to Mr. Samartgis' inability from time to time to comply with the food/liquor ratio.

In their summation, Counsel dealt with two issues:

- (1) That the Licensee had achieved compliance with the Regulation during September, 1979, and

- (2) The validity of the food voucher system or food coupon system used by the Licensee which is the apparent reason compliance was achieved.

Dealing firstly with the food coupons, the Regulations to the Liquor Licence Act contain only one reference to cover charges in Section 7 of the Regulations as follows:

"Cover Charges"

7. (1) Where entertainment is provided to patrons or premises for which a dining lounge or dining room licence is issued, the holder of the licence may charge a fee for entry to the licensed premises to cover the costs of entertainment provided that there are other facilities in the establishment where patrons may be served a meal at regular meal hours and where no entry fee is charged.
- (2) Where the holder of licence imposes a cover charge for entry into a premises, notice of such charge and the amount thereof shall be indicated at the entrance to the premises and on a card placed on all tables.
- (3) All advertisements placed by a licence holder referring to premises where there is a cover charge shall make reference to the existence of such charge.
- (4) For the purposes of subsections 5 and 6 of section 6, fees collected from a cover charge shall not be included in the calculation of food sales. O.Reg. 1008/75, s. 7."

The Tribunal is of the opinion that the Section is unambiguous and is intended to apply to situations where Licensees wish to charge a fee for the purpose of applying the said fee to their entertainment costs. In that situation the Regulation indicates that the cover charge or entry fee cannot be used in the calculation of food sales to achieve compliance with Section 6 (5) of the Regulation.

The Tribunal is of the opinion that Section 7 of the Regulation has no application to the food coupons sold by this Licensee because of the following uncontradicted evidence led at the hearing before it:

(1) That Mr. Samartgis indicated that even if a patron refused to buy a food coupon he would still be admitted entry to the premises although he would be required to purchase at least \$1.00 worth of food. It is noteworthy that Mr. Grannum indicates that the Board has on other occasions not taken exception to minimum cover charges for the purchase of food in other establishments.

(2) That the intention of the food coupons was to promote food sales in order to achieve compliance with Section 6 of the Regulation and not to be used as an entry fee or cover charge.

(3) That the evidence from Mr. Samartgis is clear that the patrons do in fact use the coupons after purchase of the same as evidenced by the fact that almost all of the first 10,000 food coupons were returned to the establishment in the form of food purchases and a second printing has now been added with a different colour.

It is also obvious that the Licensee's net return from a \$1.00 coupon is much different than the return to be expected from a \$1.00 entry fee or cover charge given the Licensee's fixed costs of food and general overhead which must be taken into account when preparing the food whether it be an order for \$1.00 or a larger amount. In other words, the return to Mr. Samartgis is much less than the \$1.00 when one takes the fixed costs of the purchase of food and labour into account. It therefore appears to follow that the best use of the food coupon as far as the operation of this establishment is concerned is as a catalyst in order to encourage the purchase of items in excess of \$1.00.

The Tribunal does emphasize the uncontradicted nature of the evidence which was adduced at the hearing and is mindful of the fact that such a system as food coupons might be subject to abuse and used as an indirect means of implementing a cover charge or entry fee in order to achieve compliance with Section 6 (5) of the Regulation. The Tribunal however is of the opinion that each situation must be dealt with on the basis of the evidence placed before it.

In dealing with Section 6 (5) of the Regulation and the issue of compliance, certain provisions of the Liquor Licence Act, 1975 must be reviewed.

1. Section 10, subsection (1) of The Liquor Licence Act, 1975 states:

"The Board may at any time review a licence or permit on its own initiative and attach such further terms and conditions as, it considers proper to give effect to the purposes of this Act."

This power of the Board is in addition to its power under Section 11, of revocation, suspension, or refusal to renew.

2. One of the purposes of the Act is the licensing of restaurants to sell liquor. A restaurant is defined in Regulation 1(n)

" 'restaurant' means an establishment which has full kitchen facilities for the preparation of meals and is engaged in the sale and service of meals to the public...."

3. It is clear that the chief operating characteristics of such an establishment is that it "is engaged in the sale and service of meals to the public". Further, where a dining lounge licence is issued to a restaurant, Regulation 6 (5) requires,

"(a) the total receipts from the sale of liquor in any month shall not exceed the total receipts from the sale of food in the same month; and

(b) a daily record showing the sales of liquor and food shall be maintained."

When dealing in the past with the issue of compliance of Section 6 (5)(a) of the Regulation, the Tribunal has set out certain criteria to serve as guidelines:

1. The operation by the Licensee is a bona fide restaurant (food) operation.
2. Reasonable efforts are being made by the Licensee to meet the requirements of the Regulation.
3. Reasonable success toward the goal of meeting the requirements in a reasonable period of time is being had.

It is the opinion of the Tribunal that the operation of the Licensee is a bona fide restaurant operation and that the issue to be resolved is whether the Licensee is and has been making reasonable efforts to meet the requirements of the Regulation and further whether he has had reasonable success within a reasonable period of time.

The evidence indicates that the Licensee is dependant on a clientele which is not likely to change and it is a fair inference that this clientele is attracted to the establishment because of the dancers who perform there on a regular basis. In other words, the entertainment attracts a patron more interested in viewing and drinking rather than eating and drinking. The Licensee to combat this problem and yet keep the substantial increase in revenues which he has experienced has been innovative to the extent that he has provided a method to promote the food in his establishment by the use of food coupons. The Tribunal is of the opinion, on balance and on the basis of the evidence adduced, that his efforts to achieve compliance with the Regulation are reasonable, and that he has demonstrated that he may well be able to continue to meet the necessary ratio of food to liquor in the future. The Tribunal is of the opinion that the Licensee should be afforded a reasonable period of time to demonstrate if he is capable of maintaining his success of September, 1979.

The Tribunal, therefore, orders that the decision of the Liquor Licence Board in respect of the said licence be amended to read as follows:

"THE TRIBUNAL ORDERS that the decision of the Liquor Licence Board in respect of the said licence be altered to read: Commencing the 15th day of January, 1980 there shall be attached to the said licence a term and condition that the sale and service of liquor shall cease at 10:00 p.m. daily until such time as the requirements of Section 6 Subsection (5) (a) and (b) of Regulation 1008/75 are met provided that if the said requirements are met for the months of October, November and December, 1979 the said term and condition shall not at that time become effective but shall become effective on the 15th day of the month following the first month thereafter that the said requirements are not met and provided that the licence holder shall forthwith institute such record keeping as is required by the Board.

THE TRIBUNAL FINDS that the food voucher procedure instituted by the licensee is not invalid under the Statute or Regulations.

DONWOOD RESTAURANT

Application for a Dining Room Licence
by
Donwood Restaurant Limited
APPEAL FROM REFUSAL TO ISSUE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: JAMES ELIA representing the applicants
S.A. GRANNUM representing the Liquor Licence Board

DECISION: DECEMBER 5, 1979

Donwood Restaurant Limited, the principals. The Liquor Licence Board after a hearing issued a decision on the 20th of July, 1979 refusing the issuance of a licence on the grounds that it is not in the public interest, having regard to the needs and wishes of the residents in the municipality.

At the outset the Tribunal established for the record that there is no disentitlement to the licence based on either the character of the Applicants or of the nature of the operation. It is accepted that were it not for the exception set out in Section 6 (1) Paragraph (g), the Applicants and establishment are of the kind that would be entitled to the licence.

The Tribunal made reference to its decision in the matter of Pros Restaurant, Scarborough, rendered on the 12th January, 1979 and reported in Volume 2 of the Summaries of Decisions on Page 148, quoted from pages 155 and 156.

The facts of this situation are somewhat different from those of Pros Restaurant. In support of the application is the petition of customers. That petition would appear to be made up of customers whom the Tribunal believes in the main to be drawn from the commercial and industrial section south of the main street which lies south of the Donwood Plaza. Their needs and their wishes are to be considered because they are part of the public. In addition, there is a petition of the residents of the area - a substantial number. They have indicated by the petition what can be interpreted as an expression of needs and wishes for a restaurant.

The Application is supported by the manager on behalf of the Donwood Plaza. The Tribunal cannot give too much weight to that support, which follows naturally because of the relationship since the landlord stands to gain. In favour is the testimony of a resident, Mr. Crosbie, who put forward very well, an expression of opinion as a resident in support of the application. Mr. Crosbie's wish in this regard is evident in his testimony. His needs could be satisfied technically by one of the other establishments; he finds that as to particular needs by way of service, they can be best served at the restaurant and should be met by an issuance of a licence.

An expression of needs and wishes which is against the issuance of the licence is evidenced in the main by the position taken on behalf of the Ratepayers Association. The particular Ratepayers Association represents the total area in the heart of which is the establishment site. It is a Ratepayers Association which has some 660 members and has been in existence for a considerable number of years. The Ratepayers Association is on record with the Board as being in opposition, and its President has appeared today. The Tribunal accepts the position of the President as being representative of most of the membership of the Ratepayers Association though it has been brought out in evidence that some 43 signatures on the petition of residents in favour are members of the Ratepayers Association. The Tribunal accepts the position of the President on behalf of the Ratepayers Association as being representative of the large majority of the ratepayers surrounding the site of the establishment. It is significant that the decision of the Board was issued some time ago and that the annual meeting of the Ratepayers Association was held on the 5th of November between the time of the making of the decision and this Tribunal hearing. The Tribunal accepts the decision expressed by Mr. Siemens as having been confirmed by the Ratepayers Association.

In opposition to the application was Alderman Burton as representative of Ward 12 which encompasses the total area represented by The Ratepayers Association and the immediate areas to the south and to the north, and a past president of a neighbouring ratepayers association. The Tribunal accepts as significant his testimony accepting that in this instance he is a conduit for an expression of opinion by members of the public within the municipality. The Tribunal has before it a resolution of a Committee of North York Council reiterating the opposition placed before the Board. In this instance the Tribunal accepts the resolution as being a conduit for the expression of opinion on behalf of the public within the municipality. There is a letter from the local Member of Provincial Parliament, only an expression of opinion by the Member, and it is accepted as such.

The determination of the issue is not an easy one. It is not a clear-cut one, but the Tribunal must seek out where the balance lies. In a consideration of this particular situation where there is such a substantial position of members of the public in a fairly close vicinity, the balance to be sought is not an easy one. The Tribunal in weighing representation has accepted the position of the Ratepayers Association, backed up as it is with the support in their position by the Alderman and the municipal resolution.

The Section refers only to a regard to needs and wishes. The Tribunal has accepted the position that that expression need only be bona fide. The concerns of the Ratepayers Association in this instance, have more to do with concerns as to what might occur in the future than with what is the present situation. Indeed, the Plaza and the attendance of persons, and the operation of the restaurant do not indicate that there is any real problem at the present time. However, the Ratepayers base their views and concerns on problems which they consider real and which they consider to be emanating from another licensed establishment. The Tribunal accepts those concerns as being real and the expression of needs and wishes to be bona fide.

The needs and wishes of those who support the issuance of a licence to the applicant can without too much difficulty or inconvenience be satisfied by the present licensed establishments which are located on the perimeter of this very large residential area in which the establishment is sited. Their wishes for the amenities can also be met in this manner.

As was stated in the Pros Restaurant decision, the needs and wishes of those who oppose the issuing can only be met by a refusal to issue. In the Pros decision there is this paragraph:

"It is likely that the refusal herein to issue a licence will be a hardship to the applicant. It is to be hoped that the residents of the neighbourhood will patronize the restaurant to a degree that will alleviate any loss due to the lack of licence. The disentitlement is not to be taken as a reflection on the applicant or the operation."

The Tribunal is of the opinion that those words also apply in this instance.

The decision of the Tribunal is that the decision of the Liquor Licence Board to refuse to issue a Dining Lounge Licence to the applicant be confirmed on the grounds that the issuance of the licence is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located.

HOUR GLASS TAVERN

Dining Lounge Licence
 issued to
 The Big-Bite Delicatessen (Scarborough) Limited
 APPEAL FROM SUSPENSION ORDER

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
 JACK C. SIM and
 BARBARA J. SHAND, MEMBERS

COUNSEL: BORIS G. FREESMAN, Q.C. representing Licensee
 S. A. GRANNUM representing the Liquor Licence Board

DECISION: JANUARY 25, 1979

Big-Bite Delicatessen (Scarborough) Limited is the licensee (09127) of the establishment classified as a tavern and known as Hour Glass Tavern situate at 300 Borough Drive, Scarborough.

Hour Glass Tavern commenced operations in May, 1973. In June, 1973 a Dining Lounge licence was issued in respect of:

1. Main Floor : East Section, Capacity 55
2. Main Floor : Centre Section, capacity 41
3. Main Floor : West Section, capacity 45
4. Main Floor : North Section, capacity 65.

The officers of the licensee are: David S. Friedman, President, and Sheldon A. Clarfield, Secretary-Treasurer. They and Sheldon Clarfield Investments Limited, are the shareholders.

There had been no offences in respect of the Liquor Licence Act previously and no disciplinary action by the Board until the present matter which is the subject of this hearing.

On the 11th day of May, 1978 the Liquor Licence Board issued a Notice of Proposal:

" to suspend for a period of twenty-one (21) days the liquor licence(s)...

FOR THE FOLLOWING REASONS

The licensee has, by its officers and employees, carried on activities that are in contravention of the Liquor Licence Act in that on or about

the 27th of December, 1977, an employee of the licence holder, namely Mary Vecchiola, did sell or supply liquor to persons who were under the age of 18 years, namely, Patricia Anne Wong, Kim Elizabeth Williamson, Lorraine Mackie Dianne Victoria Janssen, and Sophie Ambis, contrary to Section 45 (1) of the Liquor Licence Act, 1975."

After a Board hearing on July 4, 1978 to consider its proposal, the Board issued its decision:

"that the Licensee has carried on activities that are contrary to the provisions of the Liquor Licence Act, 1975 and, in particular, Section 45 (1) thereof in that on or about the 27th day of December, 1977, liquor was sold in the licensed premises to persons under the age of eighteen (18) years.

The Board, therefore, ORDERS that the Dining Lounge Licence issued in respect of the Hour Glass Tavern be 'SUSPENDED' effective at the opening hour on MONDAY, JULY 24th, 1978 and to continue until the opening hour on MONDAY, JULY 31st, 1978."

Areas 1, 2 and 3 occupy one unit of the Dining Lounge Licence and is referred to herein as Hour Glass. Area #4 known as Kozy Korner, opened in March, 1976, is adjacent, with 3 inter-connecting openings. There are 2 outside entrances to Hour Glass and 1 outside entrance to Kozy Korner. There are 3 exits (doors equipped with panic hardware) from Hour Glass.

In March of 1976 Area #2 was redesignated by the licensee as a discoteque between the hours of 8 p.m. and 1 a.m. and the total capacity of 141 of Hour Glass would be reduced up to 20% depending on the space used for dancing.

Police Constable William Hawley attended the Hour Glass Tavern on the 27th day of December, in plain clothes on a regular visit for a routine check. Constable Hawley had visited the premises about 3 times weekly for a total of about 40 times since August, 1977 in routine checks. He had not seen either Mr. Clarfield or Mr. Friedman on any visit. He described the clientele as generally being a younger crowd between the ages of 18 and 25.

On the 27th of December the premises were filled about to capacity as school was out for vacation. Constable Hawley entered the premises at approximately 9:20 p.m. and was there for about a half hour with a partner. They observed 4 young-looking female patrons, apparently minors, sitting at a table. At about 9:45 p.m. they observed a waitress, Mary Vecchiola serve them with liquor and collect the money. The constable checked the 4 girls for age identification.

Lorraine Mackie, born 16 November, 1960 admitted to being 17. She stated she had "no trouble getting in." Subsequently, on the 8th of February, 1978 she pleaded guilty to unlawful consuming liquor in contravention of the Liquor Licence Act and was fined \$20. Kim Elizabeth Williamson admitted to being 17 and subsequently pleaded guilty to a charge of unlawfully consuming liquor in contravention of the Liquor Licence Act and was fined \$20. Dianne Victoria Janssen, born 24th August, 1960 admitted to being 17. She produced an identification which turned out to be her sister's driver's licence. Catharine McNeil turned out to be 18, having been born on the 5th December, 1959. To Constable Hawley she had appeared to be a minor.

Constable Hawley also observed through the opening to Kozy Korner another waitress serving liquor and collecting money from one, Sophie Ambis, who upon being checked, admitted to being under 17, producing no identification as to age. Subsequently she pleaded guilty to unlawfully consuming liquor in contravention of the Liquor Licence Act and was fined \$20.

Constable Hawley recalled seeing someone checking at the door and supervising. At that time Constable Hawley spoke to the day (and senior) manager, Nick Peteras, pointing out the 4 females who were under age. Peteras admitted that he had seen them coming in and that they had looked young. However, he said that he was off duty and was preparing to leave the premises. In discussing the matter with the constable, his attitude was "What can you do?" Constable Hawley spoke to the night manager, Sam Pinellis who advised him that the bartender on duty had become sick and he had to take over as bartender. Patrons were dancing and Constable Hawley did not recall seeing food being eaten.

In conjunction with the incident, Mary Vecchiola pleaded guilty to 3 counts of unlawfully selling liquor to a person who is apparently under the age of eighteen years. She was fined a total of \$600.

Management on behalf of the licensee admitted the facts relating to the incident of 27th of December, 1977 but pleaded inter alia that no penalty be imposed because of:

- (a) the measures taken to control the service of alcoholic beverages to minors and because of
- (b) the extenuating circumstances by reason of the illness of the bartender on the particular evening
- (c) the record generally of the licensee
- (d) the harshness of the penalty under all the circumstances.

Management had set up a system of monitoring supervisory personnel at a number of their establishments, and had set up meetings at which the personnel were instructed in their duties.

After 8 p.m. all entry to the dining lounge was channelled through one entrance and personnel were stationed there to pass on the ages of those who sought entry. There was attempted segregation of under aged patrons, and their categorization by the use of coloured glasses for service of non alcoholic drinks.

Management was aware generally and specifically of the entry and presence of under aged persons because the licence was that of a dining lounge into which minors are permitted, and because an inspector had cautioned. They knew that younger persons including under aged persons, were especially attracted by the disco operation; indeed, it was the purpose of the discoteque to attract patrons. Everyone involved in the operation of Hour Glass Tavern knew or should have known in the ordinary course that the under aged persons would try to emulate their older peers in drinking.

They should have been aware that the matter of minors and alcohol is of great concern generally and that the responsibility of those licensed to sell is very great. Schwenger Co. Ct. J. in R. v. Tyler (1950) O.W.N. 584 stated:

" The contemplation of any situation which tolerates or permits the consumption of liquor in licensed premises by a person under 21 (as it then was) years of age creates immediate objection in the minds of all sound-thinking people."

Under the particular circumstances of this operation, the Tribunal is of the opinion that the measures taken by the licensee were not enough to discharge the care and diligence required either as to procedures in force or as to ensuring their execution.

This is not a situation of a breach of a condition of the licence, not to permit any person under, or apparently under, the age of nineteen years to enter or remain upon the licensed premises, where appropriate screening can be under the circumstances a discharge of the responsibility. In the Hour Glass, the underaged persons could move about the premises in conjunction with their dancing so that the checking and supervision had to be continuous and of a very high degree. The Tribunal is of the opinion that the degree of diligence required, when young people attend evidently not to dine but to dance and drink is to insist, where persons apparently are under age, on the production of the best form of age identification prior to sale and service of alcohol. Under most circumstances this would mean the production of the card issued by the Liquor Licence Board. It is significant that the Legislature has provided the procedure by which a person can protect himself, for Section 45 (8) reads as follows:

" A person who sells or supplies liquor to another person shall be deemed not to be in contravention of subsection 1 or 2 if, before he sells or supplies the liquor, a card in the form prescribed by the regulations is produced to him by the person to whom he sells or supplies the liquor, which purports to be issued by the Board to the person producing it and if there is no apparent inconsistency on the face of the card or between the card and the person producing it."

The Tribunal holds there should have been clear-cut instruction by management to all serving personnel, with respect to almost absolute age identification prior to sale and service, and in particular with respect to the use of Age of Majority Cards, and a much more stringent approach with respect to enforcing the carrying out of this requirement. The Tribunal finds no appearance of concern on the part of those in actual charge of the dining lounge with respect to minors and liquor at the time of the incident.

The Tribunal notes that in addition to the provision now of 2 doormen for initial screening procedures, the Age of Majority Card is the only acceptable identification on the premises.

The Tribunal is of the opinion that the action taken by the licensee to prevent the service and sale of alcoholic beverages in the premises to minors generally and on 27 December, 1977 in particular, fell short of what was necessary and what an ordinary prudent man would do in exercising reasonable diligence in this regard.

Constable Robert Cummings testified in respect of an incident on the 20th day of February, 1978 in which he observed one, Patricia Anne Wong, being served with a bottle of Export Ale and paying therefor. He testified that to him she looked very young and to be under 18 years of age. Accordingly, he checked her identification and discovered that her birth date was 15 of August, 1960. The Tribunal is of the opinion that on the evidence given, her appearance gave doubt as to her age and that there was no fault on the part of the licensee.

The Tribunal finds that the licensee carried on activities which are in contravention of Section 45 (2) of the Liquor Licence Act, 1975, namely, the sale and supply of liquor to persons apparently under the age of 18 years: Kim Elizabeth Williamson, Lorraine Mackie, Dianne Victoria Janssen, and Sophie Ambis.

The Liquor Licence Appeal Tribunal hereby confirms the decision of the Liquor Licence Board herein dated the 4th day of July, 1978 to suspend the Dining Lounge Licence for a period of seven days, and the Tribunal hereby directs the Board to set the commencement and termination of the said period.

INTERNATIONAL TAVERN

Lounge Licence
issued to
Nine and Jack Enterprises Limited
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: D.G. CUNNINGHAM Q.C. representing the Licensee
S.A. GRANNUM representing the Liquor Licence Board

DECISION: AUGUST 23, 1979

Nine and Jack Enterprises Limited is the Licensee (#092132) since 22 November, 1977 of premises classified as a Tavern and known as International Tavern, 11 King Street, Gananoque. The officers and shareholders of the corporation are John B. McCallum, President and Nina Frances McCallum, Secretary.

The licence issued is a Lounge Licence Serial No. L1567 in respect of 2 rooms located:

1. Main Floor
South Section
Capacity 99
2. Main Floor
Northwest Section
Capacity 87

On the 12th day of February, 1979 the Liquor Licence Board issued a Notice of Proposal to refuse to renew the liquor licence herein for the following reasons:

" The licence holder is in breach of a term and condition of its licence in that, on or about the 11th of January, 1979, the licence holder was convicted in Provincial Court of the County of Leeds and Grenville for permitting to enter the licensed lounge premises on the 19th of August, 1978, persons who were under the age of 19 years, namely Karen Kennedy and Linda Birtch and was further convicted of failing to ensure

that evidence as to the age of said persons was obtained prior to permitting the said persons to enter the licensed premises."

At the meeting before the Liquor Licence Board on March 29th, 1979 the Board issued its decision:

" Firstly, the Board hereby DIRECTS an amendment be made to its 'Notice of Proposal' bearing the date February 20th (sic) 1979 so that the operative portion will read "SUSPEND" as opposed to "REFUSE TO RENEW".

Secondly, (the Board) by virtue of the authority vested in it under Section 11 subsection (3) of The Liquor Licence Act, 1975FINDS that the Licensee is in breach of a term and condition of its 'Lounge' Licence in that, contrary to Section 5, subsection (5) and (5a) of Regulation 1008/75 of the aforesaid Act, the licensee did, by its agents and employees, permit persons under the age of nineteen (19) years to be on that part of the premises licensed as a 'Lounge' and failed to ensure that evidence as to the age of the persons was obtained prior to admitting the persons to enter the licensed premises.

The Board, therefore, ORDERS that the 'Lounge' Licence issued to Nine and Jack Enterprises Limited, in respect of the International Tavern be "SUSPENDED", effective at the opening hour on MONDAY, APRIL 23rd, 1979, and to continue effective until the opening hour on MONDAY, APRIL 30th, 1979."

The lounge licence is subject to certain terms and conditions set out in the Regulations, including:

Section 5 (5)

Subject to section 46, no holder of a licence shall permit any person under or apparently under the age of nineteen years to enter or remain upon licensed premises.

Section 5 (5a)

The holder of a licence shall ensure that evidence as to the age of the person, satisfactory to the licence holder, is obtained,

- (a) prior to permitting a person apparently under the age of nineteen years entry to premises not prescribed by section 46;

The tavern is in a building which has since the early 1800's served the public for lodging and refreshments. It is at the corner of King and Main Streets in the town of Gananoque, and the structure is very old. There is a stairway from the main entrance to the second and third floors where there is accommodation for tenants who reside under tenancies of a year or more.

Lounge Room 1 which has a capacity of 99 is situate at the south (east) corner, and has 3 doors to the outside and in addition has 2 doorways on the inside. One of the outside doors (#6) leads to a parking lot which is common to International Tavern and a licensed establishment known as the Bonnie Blinky, patronized by a younger crowd. Another door (#1) leads to a passageway between the Tavern and still another establishment. Lounge Room 2 is in 2 parts; it has 2 doors to the outside and a vestibule door on the inside, and 2 internal passages between the 2 parts. Patrons can move from Lounge Room 1 to Lounge Room 2 behind or in front of the bar.

Prior to the purchase of the establishment in November, 1977, Mr. McCallum had negotiated during a period of 6 months. Because the premises were in a state which could be described as neglected and the clientele was 'rough' the purchase price was very reasonable.

Mr. McCallum hired Norman Smith who had had some 20 years' experience in the bar business, to be bar manager. Mrs. McCallum began to be employed in the establishment. Mr. McCallum, who had been for a number of years in the general insurance business, began to 'unwind' the business, completing those assignments in which he was engaged at the time of the purchase.

Mr. McCallum attended to the completion of a work order which had been issued in respect of the premises. Over the following period of time there was a favourable change both in the physical aspect of the premises and in the clientele, which changed to a mixture of no particular age group and generally described as 'working men' alone or accompanied by their wives. Gradually, inherited employees judged unsuitable were weeded out and replaced.

There was instituted self-service where customers could go to the bar and obtain service. This related to only 5% of the service but it was admitted that it would be possible for someone to obtain beer or a drink and take it to someone else, including an underaged person. Mr. McCallum acknowledged that there had been a considerable increase in the volume of liquor sales and that the value of the establishment had increased substantially.

There was no dispute as to the allegations as set out in the Notice of Proposal. At the Board and Tribunal hearings there were filed certificates of conviction of the licensee. The licensee had pleaded guilty and was fined \$750 and costs on each of 2 charges. There was also a charge laid under Section 45 but the same was withdrawn by the Crown Attorney.

On the 19th of August, 1978 Constable Brian Thomas Mulcairn had attended the premises to investigate an incident and as a result of his investigation it was determined that Karen Kennedy, born 4 May, 1961 and Linda Birtch, born February 6, 1962 had been on the premises. From her appearance, Miss Kennedy looked 18 but Miss Birtch did not. Miss Kennedy produced a birth Certificate. Miss Birtch produced no identification. The constable had no conversation with anyone on behalf of the management.

At that time Norman Smith was attending the bar. Prior to the constable's arrival, Smith had called out to a waiter, Bryan Dailey, who was working in a section in Lounge Room 1 directly opposite the bar that there was some sort of a fight to the left around the corner from the bar, out of his line of vision. It was in the direction of Door #6. Bryan Dailey went to check the incident, which was very fleeting. He saw one of the girls and a woman engaged in an altercation. Seeing the girl and another go into the washroom, he returned to his station without making any further investigation. Neither Mr. nor Mrs. McCallum were on the premises. At the time of the incident the employees present in the establishment were the bar manager and 3 waiters.

Prior to this incident there had been no complaints of any kind made in respect of the licensee's operation. Discussions held by the inspector with management had been in the ordinary course of business and not related to any specific incident. Some discussions did relate to underaged persons. An inspector who testified was of the opinion that there was not sufficient supervision up to the time of the 11th of January, 1979 and this opinion was shared by the constable.

After the Notice of Proposal, Mr. McCallum gave up his insurance business and he and his wife devoted more time to the operation.

After the decision of the Board, responsibility for the doors and entry within a section allocated to a waiter became the responsibility of that waiter. There was additional supervision by Mr. and Mrs. McCallum. Mr. McCallum hired additional employees including a substitute manager. He stated that he met regularly with the employees to discuss the operation and the necessity for the reliance on Board cards for identification purposes. It is noted that McCallum and the employees were of the opinion that this was not necessary in all cases because most of the young people were known to the waiters since the community was small.

Mr. McCallum stated that from an economic point of view it was necessary to keep all six outside means of egress and entrance open because of the necessity of making it convenient for entrance. Otherwise customers might go to the neighbouring establishment. He acknowledged that only 4 of the 6 doors were necessary for the operation of the business.

Counsel for the licensee submitted that the suspension ordered by the Liquor Licence Board of Ontario was in the circumstances harsh and excessive. He noted that there had been no previous incidents, that there had been no necessity for any warning and that there had been no problem with underaged persons, that the incident was such an isolated instance as to be equivalent to an aberration and therefore under the unusual circumstances a deterrent penalty should not be imposed. He made reference to the fact that the charge which would have led to an automatic 7-day suspension had been withdrawn; and penalties had been left to the discretion of the judge. He submitted that in assessing the penalty there should be taken into consideration that fact that the licensee had upgraded both the premises and the clientele.

The Tribunal finds that at the time of the incident no direct attention was being given to the presence of underaged persons on the premises either as to entry or remaining. There was a sign respecting Age of Majority Cards behind the bar, but the only check in respect of underaged persons was made by waiters within their assigned area at the time of service to patrons.

Yet it was obvious that the number of means of entry, exit, and of internal passage created a situation where reasonable precaution meant special attention. The layout of the structure and its assortment of means of movement from the outside, and inside made control of entry very complicated and difficult. Added to

that was the circumstance that from the various localities within the premises only some of the doors could be seen, so naturally visual control was handicapped. Even Door #1 which has no outside handle was regularly opened for air by patrons on the inside. It was acknowledged by Mr. McCallum that control was difficult.

In spite of the problems apparent, no action was directed to underaged persons even though there was knowledge that such persons came upon the premises. Full participation of the management of the licensee and additional staff was not obtained, nor were new procedures instituted until after the incident.

The Tribunal is not unsympathetic to the management under the circumstances, but the seriousness of the matter of underaged persons and licensed premises is such that under the circumstances the Tribunal is of the opinion that the regulatory action of the Board should be considered separate from the penalties imposed by the judge. The record of operation and the accomplishment of the licensee in upgrading was just what is expected of a licensee.

The Tribunal finds that the licensee, Nine and Jack Enterprises Limited, was in breach of a term and condition of its lounge licence in that contrary to Section 5 Subsection (5) of Regulation 1008/75 under the Liquor Licence Act, the licensee did permit persons under the age of 19 years, namely, Karen Kennedy and Linda Birtch, to enter and remain in that part of the premises licensed as a lounge, and contrary to Section 5 (5a) the licensee did not ensure that evidence as to age was obtained prior to the entry.

THE LIQUOR LICENCE APPEAL TRIBUNAL HEREBY CONFIRMS the decision of the Liquor Licence Board suspending the Lounge Licence herein and the Tribunal hereby directs the Board to set the commencement and termination of the said period.

KERBY HOTEL

Public House Licence
issued to
332529 Ontario Limited
APPEAL FROM REFUSAL TO RENEW

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON, Q.C., and
BARBARA J. SHAND, MEMBERS

COUNSEL: CHARLES B. COHEN, Q.C. representing the Licensee
S. A. GRANNUM representing the Liquor Licence Board

DECISION: JULY 6, 1979

332529 Ontario Limited is the Licensee of the Kerby Hotel pursuant to Licence Number 010383 and the premises were classified as a hotel with its location being 244 Colborn Street, Brantford, Ontario.

The licences issued to the Kerby Hotel are as follows:

Dining Lounge Licence - DL1035 in respect of 4 rooms located:

1. Main Floor - North Centre Section
2. Main Floor - East Centre Section
3. Main Floor - South East Centre Section
4. Second Floor - South West Section

Lounge Licence L1132 in respect of 2 rooms located:

1. Main Floor - Centre Section
2. Main Floor - North West Centre Section

Public House Licence 10861 in respect of 1 room located:

1. Main Floor - South Section

It was agreed by all parties that the said licences had an expiry date of May 3rd, 1978 and that the property consisted of 2 buildings originally, a main large building containing the licensed areas and a smaller building which for the purposes of this decision will be called the annex which was used for other

than hotel purposes at the time of a fire which will be referred to.

The Shareholders and Officers of the said corporation are: David Scheer, President, Saul Zernie, Secretary and Rosa Zimmerman, Treasurer and it was agreed that the hotel was acquired by the present Licensee in May of 1976.

Unfortunately, on the 29th day of July, 1976 the hotel property with the exception of the annex building was severely gutted by fire to the extent that it could not be restored. A long process then ensued during which time the owners attempted to negotiate a satisfactory settlement with their insurers. The evidence indicated that following the final settlement with their insurers the proceeds which the owners received from the fire loss were not sufficient to retire the outstanding encumbrances against the property and the owners still owed approximately \$100,000.00.

The evidence further indicated that the annex which was attached to the hotel had originally been used as a Public House but that operation had been discontinued prior to the fire. The Licensees then undertook renovations of the annex and spent some \$60,000.00 in order to restore it to its original purpose as a Public House so that they would be able to keep some form of operation going and in that way they would obtain some income to assist them in retiring the debts of the business. It was noted in the testimony that in fact the renovations to the annex went beyond restoration for the purpose of a Public House and the Licensees restored it so that the annex might qualify as a Lounge assuming all other requirements of the Act were met.

In February of 1977 the Board, after receiving a submission from the Licensee, informed the Licensee as follows:

" In the absence of a specific or tentative date by which time the hotel will be reconstructed, the Board will, upon renewal of the existing Public House licence which expires May 31, 1977, propose to attach as a term and condition, as provided under subsection (1), clause (c) and subsection 6 (3) and (4) of section 12 of the Liquor Licence Act, 1975, that the Public House licence be renewed with respect to the new location for a period of twelve months only.

During this time it is expected that the establishment will be reconstructed to provide food and lodging to the public with respect to an establishment classified

as an hotel, in accordance with section 1, clause (f) of Regulation 1008 under the Liquor Licence Act.

Will you kindly advise the Board if your clients wish to proceed with the application on the basis described above."

It was evident from the information which was filed with the Tribunal and from the testimony received at the hearing that by April 6th, 1978 reconstruction had not commenced and in fact the Board had not received any plans for the reconstruction of the hotel. It is, however, also evident that the Licensees were not idle during this period of time and were attempting to find some way to reconstruct their premises so that there would be an economically viable operation which would give them a reasonable return on moneys to be invested.

The Licensees because of the termination date of the licences filed an application on March 28th, 1978 asking for a renewal of the licences which are hereinbefore described and upon receipt of such application the Board issued a Notice of Proposal on the 6th day of April, 1978 to refuse the renewal for the following reasons:

"The premises, accommodation, equipment and facilities in respect of which the licences are issued do not comply with the regulations in that the licensed premises are not situate in a hotel as required by Section 4 (1) of Regulation 1008/75"

It is apparent that the Board and the Licensees were faced with a difficult situation. The evidence revealed that after the fire the owners had attempted to arrange financing for the building but ran into difficulties in terms of the cost and availability of money based on the security that was available to a lender. During the year 1977 it is apparent from the evidence that the Licensee resolved to attempt to sell the building so that a new purchaser might assume the obligation of new construction. Evidence was tendered with the Tribunal which indicated that in the spring of 1978 the owners of the land and the annex did receive an offer to purchase the property and the purchaser did undertake to the Board to construct a new building on the land where the building had previously stood prior to the fire. The present owners, relying on the offer to purchase were led to believe that the transaction would close and that the new purchaser would undertake the building program which it had indicated it would commence.

Upon receiving the notice of April 6th, 1978, the Licensees requested a hearing by the Board which was held on May 25th 1978. At the conclusion of the hearing the Board reserved its decision as follows:

" until such time as written presentation relating to the redevelopment of the hotel premises is received together with a summary of Mr. Vonk's background in the development field."

and added that

" Messrs. Black and Vonk undertook to provide the Board with this information, along with a financial statement as to the status of the present operation, within a fifteen-day period. The Board will, therefore, await receipt of these requirements, at which time further consideration will be given to the matter and you will be advised as to the decision of the Board in due course."

The summary of the hearing which was filed with the Tribunal indicates that at the hearing the prospective purchaser, Puvon Investments Limited, at one time had indicated an interest in a joint venture with the present owners and information to this effect was presented to the Board. The present owners, relying on this, apparently advised the Board that the matter would be proceeded with, that is, new construction would take place. Subsequently, Puvon Investments Limited said they would prefer to buy the property outright and proceed alone in the construction of the hotel and entered into an agreement of purchase and sale in June of 1978 subject to certain conditions. Testimony before the Tribunal indicated that Puvon Investments Limited did proceed to have plans drawn for a hotel with 30 rooms but were advised that the number of rooms would not conform to the Regulations of the Act. Subsequently the said Puvon Investments Limited redrew the plans to show that 60 rooms would be constructed and indicated that they were prepared to comply with the Board's request.

The evidence indicates that Puvon Investments Limited requested further time to complete the arrangements with the Board and to present their building program and it was not until December of 1978 that Puvon Investments Limited came to the conclusion that because of various obstacles they would not proceed with the purchase of the premises and the construction program since they did not feel it was economically viable.

The Board then was faced with the fact that the information which was to be provided to it had not been supplied and there was no sign of any progress with respect to the reconstruction of the hotel. The Board therefore convened a hearing on Monday, December 4th, 1978 to further consider the matter and found as follows:

" that the Licensee is in breach of a term and condition of its Licence in that the premises, accommodation, equipment and facilities in respect of which the Licence is issued, do not comply with the Regulations in that the licensed premises are not situate in a hotel, as required by Section 4 (1) of Regulation 1008/75."

and ordered

" that the liquor licence presently in effect, more particularly, the 'Public House' Licence, will be considered at an end as of the closing hour on TUESDAY, DECEMBER 19TH, 1978. Accordingly, as of that date, the sale and service of liquor under the authority of the said Licence is no longer permitted."

The Licensees then appealed the Board's decision to the Tribunal and evidence was heard in this matter on June 7th, 1979. At the hearing before the Tribunal the Licensees were represented by Charles B. Cohen, Q.C., of the firm of Atlin, Goldenberg, Cohen & Armel and in a letter dated June 4th, 1979 Mr. Cohen requested that the Tribunal consider an application to have the property reclassified as a Tavern pursuant to Section 4A of the Regulations of the Liquor Licence Act and to place that request in issue before the Tribunal. Mr. Cohen also indicated that his firm had not represented the Licensees at the hearing before the Board and felt that this matter had not been drawn to the Board's attention.

Evidence called before the Tribunal indicated that the Licensees carried on a competent operation in the annex which was licensed as a Public House and there was no suggestion from Mr. Ferguson, an Inspector for the Liquor Licence Board of Ontario, that there was any cause for concern over the operation. The Licensees did indicate that they felt that if they had a Lounge Licence they would be able to generate greater revenues which might in turn give them a better opportunity to redevelop the property in accordance with their original plans following the fire.

The Licensees called Melvin L. Penrose, a realtor from Brantford, who indicated that the immediate prospects for another hotel property in Brantford were not good and that such a development should await the results of an urban renewal development program which was proposed for the downtown Brantford area. It is undisputed that Mr. Penrose had years of experience with respect to the viability of commercial projects in the downtown Brantford area and the Tribunal is persuaded that any reconstruction of a hotel at the present time in the downtown area would not be economically viable and would meet with little enthusiasm from prospective lenders and/or those who would be expected to utilize the facilities.

The Tribunal is of the view that the Licensees have made a legitimate attempt to rebuild the destroyed portion of the hotel but due to prevailing economic conditions in downtown Brantford have been unable to produce a plan which is economically viable. It is also apparent that if some form of reclassification does not take place as envisaged by the Act and the Regulations then the Licensees may well suffer a severe economic loss.

The Tribunal's jurisdiction is set out in Section 15 of The Liquor Licence Act, 1975 as amended as follows:

- "15. (1) Any party to a proceeding before the Board under section 13 who is aggrieved by the decision of the Board may, within fifteen days after he is served with the decision of the Board, mail or deliver to the Board and the Tribunal a notice in writing requiring a hearing by the Tribunal.
- (2) Any person to whom a notice is given under section 12 may require a hearing by the Tribunal by giving notice in accordance with subsection 1 notwithstanding that he has not first required a hearing by the Board.
- (3) Where an applicant or holder of the licence or permit required a hearing by the Tribunal in accordance with subsection 1, the Tribunal shall appoint a time for and hold the hearing and may by order confirm, alter or revoke the decision of the Board or direct the Board to take such action as the Tribunal considers the Board ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Board.

- (4) The Tribunal may attach such terms and conditions to its order or to the licence or permit as it considers proper to give effect to the purposes of this Act.
- (5) The Board, the applicant or the holder of the licence or permit who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section. "

The provision of the regulations dealing with reclassification is set out in section 4a of the regulations and details a number of steps which must be taken before reclassification can take place, if at all.

The Tribunal is of the view that the question of reclassification was not placed before the Board at the time of its hearing and that it would be reasonable for the Board to consider an application for reclassification in accordance with the requirements of section 4a. The Tribunal notes that certain steps have to be taken prior to reclassification of a hotel and does therefore in accordance with section 15 (3) of The Liquor Licence Act direct the Liquor Licence Board to entertain an application from 332529 Ontario Limited, the applicant herein, to reclassify the hotel in accordance with the provisions of that section of the regulations. The Tribunal also notes that the Board must be satisfied that the needs and wishes of the community would be served by the reclassification and, therefore, directs the Board to give notice of the application for reclassification by following the provisions of section 6 (3) of the Liquor Licence Act dealing with publication.

The Tribunal further directs that if the applicant does not initiate the application for reclassification on or before the 31st day of August, 1979 then the licences or licence presently held by the applicant shall be terminated and will be considered at an end at the closing hour of business on the 31st day of August, 1979.

Further, the Tribunal directs that if the Board in the exercise of its discretion decides not to reclassify the premises of the applicant as a Tavern then the Public House licence of the applicant will be deemed to be terminated and at an end as of the closing hour of the 31st day of August, 1979 or as of the date the Board decides not to reclassify the premises whichever event last occurs.

The Tribunal further directs the Board that if it decides in the exercise of its discretion to reclassify the premises as a Tavern then the seating capacity of the Lounge shall be determined by applying the provisions of section 10 of Regulation 1008/75 under The Liquor Licence Act, 1975.

LIDO TAVERN

Dining Lounge Licence and Public House Licence
issued to
Aleksandras Butvydas and Isabelle Butvydas
APPEAL FROM DECISION TO REVOKE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: HENRY P. STEPONAITIS representing the Licensees
S. A. GRANNUM representing the Liquor Licence Board

DECISION: JULY 5, 1979

Isabelle Butvydas and Aleksandras Butvydas are the licensees (#090056) of premises classified as a tavern located at 3885 Sandwich Street West, Windsor.

Licences issued are as follows:

Dining Lounge Licence
in respect of 2 Rooms.

Public House Licence
in respect of 3 Rooms.

The building had 11 bedrooms on the 2nd floor. None had been rented for several years as all had been used by the owners.

The premises have been licensed since 1927. The Licensees had acquired the operation in October, 1968, and the premises have been managed by Mr. Edward Butvydas, the son of the licensees.

During their period of operation, the operation had been a good one. The appearance had been acceptable.

On the 13 February, 1977 the premises were extensively damaged by fire. On the 14th of February, 1977 the local inspector reported to the Board:

"the operation will be closed down and
inoperative for several months. "

The second floor, the Public House Area, and the kitchen had been damaged by fire and water to the degree that the premises were unsafe. However, the building is still standing and is capable of being restored.

At the end of March, 1978 the licensees showing addresses at the licensed premises, sent an application for a renewal of the licences. By letter dated 3rd April, 1978 the Board through R. W. Street, the Director of Licencing, advised the licensees at the licensed premises,

" In order that we may process the application will you kindly advise the Board when you expect to bring the premises which were destroyed by fire on February 13, 1977 back into operation."

On the 6 April, 1978 the application was sent to the licensees for completion by signatures and the same was received back by the Board on 18 April, 1978.

The renewed licences were dated the 18 April, 1978 and bore the regular endorsement:

" subject to prior suspension or revocation pursuant to the Liquor Licence Act, 1975 and the Regulations thereunder, this licence expires on 31 March, 1980. "

By letter dated 19 April, 1978 the Director of Licencing wrote:

" To date no response has been received to our letter under date of April 3rd, 1978, a copy of which is enclosed.

Would you kindly advise the Board when you expect to bring the premises which were destroyed by fire on February 13, 1977 back into operation in order that we may process the application. "

By letter dated 21st April, 1978 the licensees replied that September 1st, 1978 was tentatively scheduled as the date expected for the tavern to be brought back into operation.

There is no record as to whether the letter of April 19, 1978 and the letter of reply of 21 April were received prior to the issuance of the renewed licence although Mr. Street assumed that would be the case since that was the procedure generally followed, i.e. though the renewed licence was dated 18 April, it would not have been mailed out until after the receipt of the letter dated 21 April. However, the Tribunal is of the opinion that it may have been otherwise in this instance.

As of the 20 September, 1978 the inspector noted that the premises were still closed. As of 29 September, 1978,

" there has been (no) progress regarding renovations to the damaged premises whatsoever, if anything, the building is getting worse due to vandalism and weather, and for the public to see a licensed premises in that condition is embarrassing. "

The inspector noted "the whereabouts of the owners is unknown by the (inspector) who repeatedly tried to obtain the information, but was unsuccessful". In his testimony the inspector acknowledged that the reason he had not discussed the matter with and had not seen the licensees in the interval, was because he had "no reason to contact them", the matter being in the hands of the Board.

On the 13 October, 1978 the Liquor Licence Board issued a Notice of Proposal to revoke the liquor licence for the following reason:

"the licensed premises have not been operated since on or about the 13th of February, 1977 at which time they were damaged by fire."

On the 11th day of December, 1978 an application for transfer was before the Board but the Board did not deal with the matter formally.

On the 11th December, 1978 after a hearing the Board found:

"that the Licensees are in contravention of the Act and Regulations appurtenant thereto and in particular, Section 6 (1)(f) of the Act, in that they have not operated the said premises since on or about February 13th, 1977. "

After the fire had occurred, some 5 months were spent on a settlement with the insurance with respect to the damages for there had been estimates ranging from \$125,000 to \$230,000.

This was a longer period of time than had been anticipated by the licensees.

The settlement funds were utilized to pay off 3 mortgages which had matured. The licensees exhausted the ways of obtaining financing to rebuild the premises but to no avail. In 1970 when there had been fire damage in the sum of \$1,000,000 the licensees had restored the operation and continued it. It will take about 4 months to repair the damage of February 13, 1977. If the settlement with the insurance company had taken 3 months and the licensees had been able to get financing, the 1 September, 1978 was a reasonable restoration date to have been estimated as of 21 April 1978.

The Tribunal finds that the licensees were desirous of continuing the operation, had exerted efforts to restore it, but were prevented by lack of funds.

On behalf of the licensees it was argued that the unconditional renewal of the licence under the circumstances, and the lack of communication that the liquor licence might be revoked if the premises were not rebuilt, "lulled them into a feeling" they had a continuing licence valid until 31 March, 1980, that that was the time frame within which they had to find some satisfactory solution.

The Tribunal finds that this was a reasonable inference to be drawn by the licensees.

The Liquor Licence Act, 1975 provides in Section 13 that the Board may refuse to renew... or revoke a licence for any reason which would disentitle the licensee. Such a disentitlement is set out in Section 6 (1)(f), namely:

The premises and accommodation, equipment and facilities in respect of which the licence is issued do not comply with the provisions of the Act and the regulations applicable thereto:

Counsel for the Board referred to Section 15 (2), Section 16 (2) and Section 17 of the Regulations in this regard as being requirements not complied with. It is clear that the Board had the power to revoke because of non-compliance.

Counsel for the Board referred to Regulation 4(2) and its requirement of "continuous operation" and the Board in its decision made reference to the licences being in contravention 'in

that they have not operated the said premises since on or about February 13, 1977'. The Tribunal is of the opinion that this provision is not to be applied strictly where the break in operation has been brought about by circumstances not due to the licensees, and where the licensees have exerted reasonable efforts to have the operation restored.

There is no doubt that a severe financial loss would occur if the premises did not bear all of the licences issued in respect thereof.

The Tribunal is taking note of the sincere belief of the licensees in the continuing validity of the licence. It is not likely that many lay persons would realize the full significance of Section 6 (1)(f) in relation to the licensed premises damaged by fire.

THE TRIBUNAL ALTERS the decision of the Board herein as follows:

1. The licences herein are made subject to the term and condition of,
 - (a) Compliance by the 31st of December, 1979 with Section 6 (1)(f) of the Liquor Licence Act, 1975 as the provisions of the Act and the Regulations applied to the premises as of 13 February, 1977.
The reconstruction and renovation of the premises to be in accordance with plans to be approved by the Board.
 - (b) Compliance by the 31st of December, 1979 with any other condition imposed by the Board by virtue of its authority under Section 10 of the Act or by virtue of any other power.
 - (c) The operation of the two licences concurrently at all times, with no greater seating capacity than as existed on the 13 February, 1977, except as may be authorized by the Board.

NORTHWAY HOTEL

Dining Lounge and Lounge Licences
issued to
Radusin Investments Limited
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: B. J. SHIELDS representing the Licensee
S. A. GRANNUM representing the Liquor Licence Board

DECISION: OCTOBER 11, 1979

Radusin Investments Limited is the Licensee (Number 010762) since April, 1968 of premises classified as a Hotel and known as Northway Hotel, 733 Pitt Street, Cornwall.

Mr. Duro Radusin is in charge of the general operation of the establishment.

On the 2nd day of May, 1979 the Liquor Licence Board issued a Notice of Proposal to suspend for 30 days the liquor licences herein for the following reasons:

5. The licence holder is in breach of a term and condition of its licence in that, on February 2nd, 1979, it permitted persons under the age of 19 years to enter and remain upon the licensed premises, contrary to Ontario Regulation 590/78 section 5 (1) and it failed to ensure that evidence as to the age of persons was obtained prior to permitting such persons apparently under the age of 19 years entry to the licensed premises and prior to serving liquor to such persons who were apparently under the age of 19 years.

(A listing of persons under the age of 19 years charged with consuming liquor.)

At the meeting before the Liquor Licence Board on June 19, 1979 the Board issued its decision:

(The Board) "FINDS that the Licence Holder is in breach of a term and condition of its 'Licence' in that it has carried on activities that are in contravention of the aforesaid Act and Regulations

appurtenant thereto, the particulars of which are set forth in the aforementioned 'Notice of Proposal'.

The Board, therefore, ORDERS that the 'Dining Lounge' and 'Lounge' Licences issued to Radusin Investments Limited, in respect of the Northway Hotel, be "SUSPENDED", commencing at the opening hour on MONDAY, JULY 9th, 1979 and to continue in effect until the opening hour on MONDAY, JULY 30TH, 1979.

In addition thereto, the Board directed that, within the next thirty (30) days, that is, on or before the 20th day of July, 1979, the 'Dining Lounge' and 'Lounge' facilities of this establishment must be separated by a seven (7') foot dividing wall to conform to the Regulations. In this connection, the Board would suggest that the Licence Holder seek the advice of the Planning Department and/or the Area Inspector with respect to this installation."

The lounge licence is subject to certain terms and conditions as set out in Ontario Regulation 1008/75, as amended, including:

Section 5 (5)

Subject to Section 46, no holder of a licence shall permit any person under or apparently under the age of nineteen years to enter or remain upon licensed premises. (O.Reg. 590/78, s.5 (1).

Section 5 (5a)

The holder of a licence shall ensure that evidence as to the age of the person, satisfactory to the licence holder, is obtained,

- (a) prior to permitting a person apparently under the age of nineteen years entry to premises not prescribed by section 46;
- (b) prior to serving liquor to a person apparently under the age of nineteen years on any premises prescribed by section 46. (O.Reg. 590/78, s.5 (2) part)

Section 46

(1) The following classes of premises are prescribed as premises on which a person under the age of nineteen years may enter,

- (a) premises for which a dining room or dining lounge licence has been issued.

Certain relevant provisions of the Liquor Licence Act, 1975 are:

Section 45

(3) No person under the age of nineteen years shall have, consume, attempt to purchase, purchase or otherwise obtain liquor.

(5) No person under the age of nineteen years shall enter or remain on premises in which the sale of liquor is authorized except those classes of premises that are prescribed by the regulations.

The hotel is a two-storey building. On the 2nd floor there are 25 rooms. On the 1st floor (Main), there is a dining lounge, and 2 lounge areas with a total capacity of 256, including dancing. In the basement there are 2 lounge areas with a total capacity of 164.

Entrance to the operating sections is gained by passing through a set of outside doors into a winter hallway, and then through a set of inside doors. From there one can proceed downstairs to the basement, or through a doorway into Lounge Area 1, further along past a check room through another (main) doorway into Lounge Area 2, and through there into the Dining Lounge Area. The Dining Lounge area was at the relevant time only separated from the Lounge Area 2 by a 3-foot high rail with banister posts below about 6" apart.

Access to the Dining Lounge area and Lounge Area #2 could be had from an outside door leading to a parking lot. The panic bar on this door was engaged in the evening, at which time it was designated for exit purposes only. (It could however be opened by someone on the outside to let someone else in). At this point there was a stairway to the basement, with a door.

A disco dance area was introduced into the main floor lounge areas in 1977, and the same was refurbished in 1978, with a steel floor and flashing lights, making it very attractive in appearance and the 'best' in Cornwall. The patrons of these areas are very young, the majority being in the ages 19 to 23. The young ladies are well dressed in disco style; the young men are generally in jeans, though a suit would not be out of place. In the summer of 1978 a cover charge was imposed on Friday, Saturday and special event nights. This was taken by a young woman seated at a table within the main lobby. She stamped the back of the hand upon payment. There was a doorman on duty every night. The doorman for 10 years was Mr. Radusin's nephew, but in October, 1978 he had been beaten up (for the 4th time) by a patron so that he required hospitalization. He was not on duty on the nights referred to herein. He had been replaced by another who, though inexperienced, tried to do his job properly.

The dining lounge was opened at meal times - for lunch between 12 and 2, and for dinner in the early part of the evening; but generally after 8 or 9 o'clock it ceased to be operated as such and in effect was used as an overflow room from the first floor lounge areas. Initially the dining lounge had been much larger, but with the concurrence of the Board it had been reduced in size and the lounge areas expanded.

The lounge areas in the basement are patronized in the main by working people from the area. Entertainment is provided in the form of strippers. Very few young people come to these areas; persons who appear under age have not been seen here. These lounge areas are in fact a completely separate and different operation.

As of February, 1979 there were some 27 employees, full time and part time; the staff was young and described as good.

In October, 1978, Holiday Inn, another licensed establishment in Cornwall, instituted a dress code. As a result, many young persons who had patronized the Holiday Inn moved to the Northway Hotel. They were initially a rough crowd and it took some time for the management to weed out the extremely bad patrons by barring them from the premises, and to change the behaviour of the others by demonstrating to them that the management meant business with respect to behaviour on the premises. At the time, Mr. Radusin spoke to the inspector and police about control.

The Liquor Licence Inspector testified that through the past 3 years he had discussed under age drinking patrons many times with management. After each occasion Mr. Radusin, being very co-operative, would tighten up control and the crowd would

grow older in appearance. But after a while a situation with respect to the presence of younger persons would return, necessitating further admonition. Particularly in November, 1978 the problem was a very obvious one and in his discussion with Mr. Radusin, the inspector suggested that there should be more persons at the door.

From the introduction of Age of Majority Cards there have been two signs posted in the entrance-ways referring to the availability of application forms, and the requirement of cards for identification purposes. The Cornwall area has been well served by the Liquor Licence Board in the issuance of cards: a great many of the young people in the community have cards.

The presence of the 9 persons on the premises referred to in the Notice of Proposal was not disputed. Certificates of Conviction - 3 with respect to Section 45 (3), 6 with respect to 45 (5), were filed at the Board and Tribunal hearings in regard to the 9.

Corporal Wood of the Ontario Provincial Police, operating out of Toronto, testified that as a result of complaints with respect to underage persons attending licensed premises, he had come to Cornwall to make a surveillance. On the 19th of January at 10:30 p.m. he attended the Northway Hotel to make observations. He paid a \$1.00 cover charge to a young girl at the desk and proceeded into the lounge area on the first floor which, in his opinion, was filled to capacity. The areas were crowded with people standing and walking about. In his opinion the crowd was very young, with many persons apparently under age. During the hour he was there he at no time saw any age check taking place. In his opinion the waitresses were over-worked to the degree that many persons served themselves by going to the bar, returning into various parts of the lounge areas.

On January 20th at about 8:30p.m. he and an associate, both dressed in jeans, entered the first floor lounge areas and sat down. There were very few people there at the time. Between 9 and 9:30 p.m. many persons came in steadily, entering through the main door. No one entered through the other door. By 9:20 the crowd was very substantial.

At that point 2 men, older in appearance than the crowd, entered with their wives. The Corporal recognized them as being police officers off duty. The group walked into the dining lounge and sat down. Corporal Wood noticed that at that time Mr. Radusin and the doorman and 2 others met on the floor of Lounge Area #2 and after chatting for a few minutes, dispersed about the premises.

He then noted that Mr. Radusin went about doing a check and that several persons who looked very young were asked to leave. He was not sure whether the presence of the 2 men and the check were related or a coincidence.

On February 2nd he was in charge of a raid on the hotel at about 10 p.m. Some 30 officers were involved, of whom 20 did an age check of all on the first floor who appeared under 19. The premises were at the time filled to capacity. The 9 persons referred to in the Notice of Proposal were found to be under the age of 19. In the dining lounge there were some 50 persons; no one was eating. Some 15 persons were checked. Leonard Caron, Mark Kelly Clarke, and Leah Mae Primeau were apprehended as being under 19. There was a part pint bottle of beer in front of each of them. When the identification of Clarke was being checked he produced a birth certificate. The checking officer immediately noticed that there had been an alteration from his real date of birth to that of the 5th June, 1960 (which would have made him 19). Clarke admitted the alteration. Of the other 6 persons mentioned in the Notice of Proposal 4 were apprehended in Lounge Area No. 1, and 2 in Lounge Area No. 2.

There were on duty 3 bartenders, 5 waitresses, one check-room person, one cover charge person, and one doorman. Just prior to the police arrival, Mr. Radusin had gone downstairs to get some glasses. The doorman was at the desk area. The Corporal spoke to Mr. Radusin when he returned upstairs. Radusin said, "It's about time - I'm glad you're checking".

Duro Radusin had arrived in Canada in 1951 and worked in a mine. In 1960 he purchased a hotel in Sudbury which he operated for some eight years. In August, 1978 he bought the Northway Hotel. He stated that he tried to do the best job he could. He worked long hours, attending to all aspects of the business, and slept on the premises. Often in the evening he would patrol the parking lot door, and on occasion would relieve the doorman at the front. His operation was described as being respectable.

He said that he had continuously instructed his staff with respect to I.D.'s, "you have to be careful" and that they should ask for photo cards or in the alternative, for 3 pieces of identification. He stated that the period after 1st of January, 1979 was difficult because of the change in age requirement; he regarded the events of 2 February, 1979 as his bad luck. It is to be noted that all of the persons with the exception of one were on the 2nd of February, not only under 19, but under the age of 18. Since the 2nd of February only photo cards are accepted, and now the disco crowd appears older.

Except for the suspension of the licences by the Liquor Licence Board on 19 June, 1979, the Board has never suspended or revoked a licence issued to the licensee, nor has the Board at any time disciplined the licensee or the management thereof.

The Tribunal referred to In R. v. Royal Canadian Legion (1971) 4 C.C.C. (2d) 196, D.L.R. (3d) 148 (1971) 3 O.R. 552, and to Regina v. Action Tavern Ltd. 26 C.C.C. (2d) (at page 135).

Did the licensee herein, Radusin Investments Limited, at all times do all that which an ordinary prudent man would do in exercising reasonable diligence with respect to preventing the entry and presence of persons under 19 and so ensure that the act prohibited in Regulation 5 Subsection (5) did not occur? Did the licensee obtain the evidence necessary by virtue of Section 5 (5a) and did he take all reasonable steps with respect thereto?

Management deliberately introduced Disco into the 1st floor lounges to attract clientele, and it in fact did attract a good deal of business. It was also obvious that there was created an environment which was attractive to young patronage generally - not only persons of drinking age but also those under the age of 19. This would call for measures more stringent than otherwise to match the situation. It is clear that the Northway Hotel had for some considerable length of time, difficulty with respect to under age persons. The matter had been brought to Mr. Radusin's attention on a great many occasions and though he responded at the time, continuous undiminished effort was not pursued in this regard. The physical lay-out of the premises lent itself to a very thorough checkout of persons entering the licensed premises. The licensee should have taken advantage of this to the fullest.

Mr. Radusin should have been aware of the problem created by access to the dining lounge being by passing through the lounge. Strict reliance on Age of Majority Photo Cards would have enabled him to exercise the requisite kind of control both as to lounge entry and dining lounge service. The community was well supplied in this regard. No evidence was adduced by the licensee that any check as to age identification was made in the dining lounge. The Tribunal is of the opinion that the doorman was there principally to control behaviour - the person seated at the table was there to collect cover charge - and the waitresses were to bring service.

The fact that after February 2nd sole reliance on photocards has brought about a basically older crowd, is proof that control was possible and that the situation called for control of that kind. The check carried out on January 20th within the lounge proved that checks were necessary and efficacious.

It is true that Mr. Radusin has operated the licensed premises for a considerable number of years without any complaint, but this does not excuse any laxity at any time with respect to any of the regulations including, perhaps especially, those related to under age persons under the circumstances. The seriousness of such matters must now be apparent to all licensees. Mr. Radusin's years of operation should have made him aware of this and provided him with the expertise to deal with the matter. He was aware of the attitude and action of certain young persons with respect to age identification.

The Tribunal finds that the licensee did not act as a prudent person with reasonable diligence with respect to entry and presence of persons under or apparently under the age of 19 into the lounge areas on the first floor. The Tribunal finds that the licensee did not ensure that any evidence was obtained prior to entry of such persons into the lounge areas, nor prior to the service of liquor to such persons. The self-service allowed when under age persons are permitted by the Regulations in the dining lounge, and might be in the lounge, created a situation where there was great potential for breach of the Regulations.

The Tribunal finds that the licensee was lax in its efforts related to the presence of and service to under age persons. Nine such persons in one evening even out of a capacity crowd, are an indication of the laxity in effective control. Adequate measures in this regard were not taken until after February 2nd.

The Tribunal finds that the licensee permitted Pierrette Alice Rehal, Susan Marion, David Mitchell, Kimberly Bailey, Elaine Belanger and Coleen Reynolds as set out herein to enter and remain upon a licensed premises contrary to Ontario Regulation 5 (5) and that it failed to obtain evidence as to age prior to their entry, and prior to serving liquor to 3 persons, Leonard Caron Jr., Mark Kelly Clarke and Lea Mae Primeau contrary to Section 5 (5a).

The Board has suspended the lounge and dining lounge licences, thereby affecting all areas of service. The Board found no shortcoming in the operation of lounge areas in the basement, nor does the Tribunal so find. The Tribunal finds no action or inaction on the part of the licensee that would warrant a total suspension. Accordingly, the Tribunal is of the opinion that the penalty should be restricted to the first floor where the breaches took place. The Tribunal sees no reason to change the duration of the penalty.

The Tribunal notes that the licensee has made the partition as directed by the Board in its decision.

THE LIQUOR LICENCE APPEAL TRIBUNAL hereby alters the decision of the Liquor Licence Board by changing the Order of Suspension dated 19 June, 1979, of the Lounge and Dining Lounge licences herein, to an attachment of a term and condition to the said licences that the total licensed areas on the main floor be closed for the sale, service and consumption of liquor for a period of 21 days to be set by the Liquor Licence Board, and the Tribunal hereby so orders.

OASIS RESTAURANT

Dining Lounge Licence
issued to
James Papageorge and Konstantinos Lefkaditis
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: STANLEY J. WEISMAN, Q.C, representing the Licensees
S. A. GRANNUM representing the Liquor Licence Board

DECISION: MARCH 27, 1979

Konstantinos Lefkaditis is presently the licensee (#020039) of the establishment classified as a restaurant and known as Oasis Restaurant situate at 532 Evans Avenue in the Borough of Etobicoke. Mr. Lefkaditis had been in partnership with James Papageorge, but had assumed the latter's interest. The licence, renewed as of March, 1979, is in his name only.

The licence issued is a Dining Lounge Licence Serial No. A1768 in respect of a room:

1. Main Floor: Centre Section, capacity 166.

The licensee acquired his initial interest in the establishment in June, 1977. The premises are located in a separate one-storey building. There is a front entrance with 2 inside entries, and a rear entrance from a parking lot and side driveway. To the left of one of the front entries is the bar. At the front and centre of the premises tables are continually set up for dining. In the rear there is a section with a stage, dance floor, and pinball machines. Chairs and tables are not set up for eating except at lunch time.

The clientele is made up at lunch time of factory workers and truck drivers, at supper time of a much lesser number of workers and nearby residents, and after 9:30 of a younger crowd who come in not to eat, but to be entertained and to relax with a juke box and pinball machine.

On the 9th day of June, 1978 the Liquor Licence Board issued a Proposal to suspend for a period of 14 days the liquor licence for the following reasons.

" The licensees have carried on activities that are contrary to the Act in that, contrary to Section 45, subsection (1) of the said Act, the licensees knowingly sold and supplied liquor to persons under the age of 18 years on the 24th and 25th of February, 1978 as follows:

On the 24th February, 1978, Konstantinos Lefkaditis, one of the licence holders, sold and supplied liquor to Douglas Allan Walker and to Melvin Alfred Douglas who were persons under the age of 18 years.

On the 25th February, 1978, the said Konstantinos Lefkaditis did sell and supply liquor to Edward Michael Cardwell, a person under the age of 18 years, and the said Konstantinos Lefkaditis was subsequently convicted in Provincial Court of the said offence."

After a Board hearing on the 18th of July, 1978, the Board found:

" that the Licensees have carried on activities that are contrary to the provisions of the Liquor Licence Act, 1975, and in particular, Section 45 (1) thereof in that liquor was sold and supplied in the licensed premises to persons under the age of eighteen (18) years and Konstantinos Lefkaditis, one of the licensees, was convicted in Provincial Court of the said offence."

and ordered

" that the Dining Lounge Licence issued in respect of the Oasis Restuarant be "SUSPENDED" effective at the opening hour on TUESDAY, AUGUST 8TH, 1978 and to continue until the opening hour on TUESDAY, AUGUST 22ND, 1978."

Relevant sections are:

45-(1) No person shall knowingly sell or supply liquor to a person under the age of eighteen years.

(2) No person shall sell or supply liquor to a person who is apparently under the age of

eighteen years, and, in any prosecution for a contravention of this subsection, the justice shall determine from the appearance of such person and other relevant circumstances whether he is apparently under the age of eighteen years.

There has been no other disciplinary action by the Board in respect of the licensee with the exception of the present proceedings.

Constable Michael Collins, a constable with the Metropolitan Toronto Police Force, testified that on Friday, the 24th of February, 1978 at 12:20 a.m. in plain clothes he attended the Oasis Restaurant in the course of his general policing of licensed premises. Some 50 persons were present.

After entry he 'walked' the length of the floor to the extreme north east corner thereof and noted at a table three males all of whom appeared to be under age, consuming liquor. He requested identification. One of the young men tried to run away but he was apprehended. Melvin Alfred Collins had no I.D. and said that no one had questioned him about it. He said his birth date was 13 September, 1960. Constable Collins recognized another from previous contacts, as Douglas Allan Walker with birth date of 13 April, 1961. He not only was 16 years, but to Constable Collins obviously appeared so. The third male turned out to be of majority age. The table was out of view of the front of the premises and of the bar. He did not know where Mr. Lefkaditis was at the time he was dealing with the youths, but on the way out he advised him of what had taken place.

On Saturday, 25th February, 1978 at 12:50 a.m. he again attended the Oasis Restaurant. Some 30 persons were present. After sitting down at the front, he noticed at the back sitting by himself a young man who looked under 18 drinking a glass of beer. He asked Mr. Lefkaditis to get the youth, whom he asked for an I.D. The youth produced a driver's licence in the name of Francis J. Cardwell with a birth date of 29/09/58. Constable Collins noticed that the year had been changed from 38 to 58 with a black ballpoint pen. Upon questioning, the youth admitted that his name was Edward Michael Cardwell, that his birth date was 14 December, 1960, and that the licence was that of his father.

Constable Collins returned Saturday at 7:25 p.m. to speak to Mr. Lefkaditis and the waitresses. One waitress admitted that she had served Edward Michael Cardwell even though he looked 16 because he was in possession of an I.D. The other waitress who served the youths on Friday had no reply when it was pointed out

to her that the I.D. she had seen had no birth date and that one of the youths, as she admitted, looked under 18. Charges were laid against the youths and against Mr. Lefkaditis.

Constable Collins had been checking the premises since September, 1977. He was very much aware of the problems Mr. Lefkaditis had with respect to his previous partner, and with looking after the operation of the restaurant where he worked personally at various functions from 7 a.m. to 2 a.m.

Constable Collins told of establishing a very good rapport with Mr. Lefkaditis with respect to operating the establishment, and that he tried to work with him with respect to the problem of minors. He acknowledged that Mr. Lefkaditis was very concerned and was doing his utmost to run a 'half-decent' establishment. Constable Collins on several occasions pointed out to him young persons he knew were under 18. On the 28th of January he cautioned him specifically about the service of minors and the necessity of requiring identification with photographs. He knew that Mr. Lefkaditis had taken action to 'turf out' underaged persons and had spoken to his staff that they were to check identification. Constable Collins was of the opinion that Mr. Lefkaditis was acting to the best of his ability but he lacked know-how in determining those who were under 18, which he acknowledged was a difficult thing to do. Though Mr. Lefkaditis was conscientious, he appeared to be incapable of exercising the necessary control personally. He was doing too much during too long a day. He was trying to do the best job he was capable of, but his effectiveness was not enough. Constable Collins was quite sympathetic to the plight that Mr. Lefkaditis found himself in by his inability to cope with a difficult situation, and expressed himself that he "hoped he would not be hurt too much".

Inspector Sergio Taddei testified with respect to his inspection of the premises from the period of 1975 to December, 1978. He told of his discussions as part of his normal duties with Mr. Lefkaditis with respect to general operation of the premises and of the care that was necessary in respect of minors, and the necessity of instructing staff with respect thereto. When Mr. Lefkaditis took over the premises in July, 1977 he was given an Age of Majority kit which was displayed continuously on the bar at the front entry. Quite a few applications have been used. He had no occasion to deal with Mr. Lefkaditis in respect of any specific incident involving minors, but he reminded him often about the photo card and instructing staff, for Mr. Lefkaditis left the discretion with his waitresses. He had seen minors on the premises but they were eating food. The establishment was a food operation, and the food/liquor ratio was 2 to 1.

The inspector was of the opinion that Mr. Lefkaditis was in the beginning 'lost' with respect to management and had a difficult time with staff problems. After the incidents the offending waitresses were let go and he was better organized.

There were filed three certificates of conviction against Konstantinos Lefkaditis in selling liquor to a person who is apparently under the age of 18 years. In respect of each there was levied a fine of \$100. There were also filed three certificates of conviction against Konstantinos Lefkaditis for permitting a person under the age of 18 years to enter and be upon a licensed premises. In respect of each there was levied a fine of \$25. It is to be noted that these latter three convictions appear to be erroneously made, for since the licence is that of a dining lounge, no such offence could have been committed in respect of the premises. Mr. Lefkaditis was not represented at the hearing of the charges and had pleaded guilty.

The Tribunal finds that Konstantinos Lefkaditis did commit offences under the Liquor Licence Act which were breaches of Section 45, subsection (2) in supplying liquor to a person who is apparently under the age of 18 years. These facts were not contradicted.

A question to be determined is what penalty is to be imposed upon the licensee. Mr. Grannum suggested a consideration of the degree of penalty in the context of a deterrent to the licensee for the future and to other licensees to bring about an awareness of the seriousness of such a matter.

The Tribunal is of the opinion that Mr. Lefkaditis has learned a lesson. He has suffered not only the fines levied by reason of the convictions under Section 45 (2) but also by reason of the erroneous convictions in respect of permitting minors. As he is leaving the operation of the licensed premises, for there is before the Liquor Licence Board a transfer of the licence from himself by reason of an agreement of sale which he has entered into, personal deterrence would not appear to be a relevant factor. The Tribunal does not believe this to be a case to be used as an example to other licensees.

The situation here is not that of a licensee not heeding the advice given him but of an inability to deal with the matter. The Tribunal is of the opinion that any licensee who is not aware of the seriousness of a breach of the Act and Regulation respecting underaged persons is unaware of a significant part of a licensee's general responsibility. Further, any licensee that continues to rely on other than photo cards for identification should by now be aware that a great risk is being assumed.

Though Mr. Lefkaditis was very concerned and well-intentioned, he must bear all the responsibility that goes with a licence of an establishment where alcohol is supplied, and must suffer the consequences of a breach. It is likely that a suspension will cause a material loss to Mr. Lefkaditis in the disposal of the business.

The Tribunal hereby alters the decision of the Board and orders that the Dining Lounge Licence issued to Konstantinos Lefkaditis in respect of the Oasis Restaurant be suspended for a period of 7 days.

PEACHES RESTAURANT, Toronto

Application for a Dining Lounge Licence
by
DRF Business Consultants Limited
APPEAL FROM TERMS AND CONDITIONS ATTACHED
UPON APPROVAL

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON, Q.C. and
JACK C. SIM, MEMBERS

COUNSEL: WILLIAM P. SOMERS, Q.C. representing the Applicant
S.A. GRANNUM representing the Liquor Licence Board

DECISION: JUNE 26, 1979

The Applicant applied to this Tribunal with respect to Conditions 1 and 3 and that Condition 2 be made effective September 15, 1979.

On the 16th of March, 1979 the Board issued its decision:

" "APPROVAL" is granted to the issuance of a Dining Lounge Licence in respect of Peaches Restaurant, situate at 128 Pears Avenue, Toronto, subject to the following TERMS AND CONDITIONS:

- (1) The hours of sale of alcoholic beverages shall be 12:00 noon to 12:00 midnight, Monday to Saturday inclusive.
- (2) The licensed premises to be vacated by patrons by 1:30 a.m. daily effective as of June 1st, 1979.
- (3) The sale and service of liquor on Sundays is not permitted. "

After a hearing the Tribunal for the parties hereto, varied the Order of the Board herein to read as follows:

A Dining Lounge Licence shall issue on or after the 1st day of August, 1979 upon compliance with the requirements of the Act and Regulations subject to the following terms and conditions:

1. The sale and service of liquor shall be in accordance with Section 6 of the Regulations, provided that the premises shall be cleared of patrons within one-half hour after the sale and service of liquor ceases.
2. On or after the 1st of November, 1979 the Board shall review the sale and service of liquor on Sunday by the Licensee upon notice to the persons having communicated with the Board and/or Tribunal in respect of this application.

CLAUDE QUESNEL, Cambridge

Application for a Dining Lounge Licence
by
Claude Quesnel
APPEAL FROM REFUSAL TO ISSUE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: PAUL D. BESEAU representing the Applicant
S. A. GRANNUM representing the Liquor Licence Board

DECISION: APRIL 19, 1979

On the 30th August, 1978 Mr. Claude Quesnel applied for a dining lounge licence for a restaurant to be known as The Pizza Den Steak House Restaurant located in Limoges, Cambridge Township, Ottawa.

Upon a consideration of the application by the Liquor Licence Board, information was brought to the attention of the Board that gas pumps are located approximately 50 to 80 feet from the restaurant premises.

The Board issued a Notice of Proposal on 2 November, 1978

"to refuse to issue a liquor licence for the above-named establishment for the following reasons:

...the property on which the restaurant is located is owned by Paneco Holdings Ltd. which corporation also owns the adjacent property on which the gas pumps are situated.

The premises, accommodation, equipment and facilities do not comply with the regulations and specifically, Sec. 5 (26) of Regulation 1008/75 which provides that no part of a property containing a licensed premises owned or controlled by a licensee shall be used for the retail dispensing of gasoline. "

After a hearing on 11 January, 1979 the Board refused the issuance of a Dining Lounge Licence to Mr. Claude Quesnel "for the reasons set forth in the aforesaid Notice of Proposal

or, more particularly, the above-mentioned premises, accommodation, equipment and facilities do not comply with Section 5 (26) of Regulation 1008/75 under the Liquor Licence Act, 1975."

On behalf of the Liquor Licence Board, Mr. Grannum acknowledged that, subject to any further 'technical' compliance with the Act and Regulations, there is no other reason except non compliance with the Regulation Section 5 Subsection 26 for the non issuance of the licence. The restaurant is described as well equipped, having reasonable furnishings and good kitchen, good washrooms. Mr. Quesnel has carried on a substantial dining lounge operation in Ottawa for the past 6½ years.

The restaurant is within and part of a building situated on a parcel of land owned by Paneco Holdings Limited forming the north-east quadrant at the junction of Limoges Road, a paved highway leading immediately south to Highway 417 and Concession Road #3, a gravel road leading east into the country. The building is some 75' east from Limoges Road and 150 feet north from Concession Road #3. The building consists of 2 contiguous sections with straight-line walls under 1 roof, a west section housing the restaurant operation, and an east section housing the indoor aspect of a gas bar operation, the restaurant lobby being in the middle. It was erected in 1978 and was built specifically for the uses being carried on.

The western part of the building is leased to Claude Quesnel by Paneco Holdings Ltd. under a lease which includes the following clauses:

- " Paneco Holdings Ltd. will rent to Mr. Claude Quesnel a building of 1,400 square feet at the corner of Highway 417 and the Limoges Road. This property is adjacent to a Gas Bar operated by Paneco Holdings Ltd. and will be used by Mr. Claude Quesnel as a restaurant.
- " Paneco Holdings Ltd. will furnish all the equipment for the operations of the restaurant and Claude Quesnel will furnish all utensils, dishes and cookware.
- " Parking lot maintenance will be apportioned 50% for the lessee and 50% for the lessor.
- " Heating will be at the charge of the lessor. All increases over the 1979 base year will be at the charge of the lessee."

The restaurant is made up of a lobby, a men's washroom, a ladies' washroom, a dining area, and a kitchen with a staff washroom. The lobby has doorways leading to the dining area, to the men's and ladies' washrooms, and to the gas bar attendant's office. The restaurant has been in operation since October, 1978. There is no sign for the restaurant but it is intended to erect one.

The gas bar operation is made up of the gas attendant's office with a doorway to the outside, a storage room to which access is from the office, and three sets of gas pumps. To the east of the gas bar some 65 feet distant are two diesel pumps; to the south of the gas bar at the distance of 37 feet are 3 gas pumps, and at a further distance of 29 feet, 3 more gas pumps. Further south at the concession road is a Shell Gas sign. Penco Holdings has operated the gas bar since September, 1978, twenty-four hours a day.

The paved surface about the building and pumps is very ample and a substantial number of cars can be parked to the west and south of the restaurant and gas pumps. There are vehicle entranceways over culverts at the northwest and southwest of the restaurant, and along an extensive stretch of Concession Road #3 commencing some 12 feet from Limoges Road. A motor vehicle can gain entrance to the area from any entrance way, be gassed up at any set of pumps, and be parked in the parking area about the restaurant so that persons may go there, and vice versa. Persons who come to get gas and wish to use washrooms use those of the restaurant, gaining access through its lobby.

The restaurant equipment which is furnished by Paneco includes a pizza oven, stoves, fryer, walk-in cooler, freezer, and the dishwashing equipment. The heating is provided from a central unit at the rear of the gas attendant's office. The restaurant, gas bar and pumps are physically so close and facilities thereof so intermingled and shared that the appearance is that of one total operation.

The issued before the Tribunal is the construction of Section 5 (26) and its applicability to the circumstances of the application.

Under the Liquor Licence Act, 1975 an applicant is entitled to a licence unless the applicant comes with a listed exception. Relevant provisions are:

- 6 - (1) An applicant for a licenceis entitled to be issued the licence ... except where,

(e) the applicant is carrying on activities that are, or will be, if the applicant is licenced, in contravention of this Act or the Regulations;

(f) the premises and accommodation, equipment and facilities in respect of which the licence is issued do not comply with the provisions of this Act and the Regulations applicable thereto;

Under the Liquor Licence Act, 1975 Section 40 there is authority given to the Lieutenant Governor in Council for the making of regulations with respect to matters, including the following:

- (a) prescribing classes of licences and permits and the terms and conditions to which each class is subject
- (n) prescribing standards for premises or the part thereof used in connection with the sale of liquor by the holders of licences and permits and the accommodation, equipment, and facilities therein and prescribing or prohibiting methods and practices in connection with the serving of liquor;

Regulations passed are set out in Ontario Regulation 1008/75 including Section 5, under the heading "Terms and Conditions" as follows:

- (26) No part of a property containing a licensed premises owned or controlled by a licensee shall be used for the retail dispensing of gasoline.
- (27) Subsection 26 does not apply to a part of a property containing a licensed premises where the premises is leased on the day this Regulation comes into force. O.Reg. 1008/75, s.5 (26, 27).
- (28) Notwithstanding subsection 26, where a licensed premises is part of a complex which includes a hotel, motel or marina, gasoline may be dispensed to the public. O.Reg. 590/78, s.5(4).

Whatever be the authority designated for Regulation 5(26) it is clear that the effect of non compliance with the Regulation is to disentitle an applicant under such circumstances.

Counsel for the Applicant adduced that the Board based its decision on the conclusion that no part of a property on which a licensed premises is located may be used for the retail dispensing of gasoline. In this regard it is to be noted that the minutes of the Board meeting refer to expressions by the Chairman "that inasmuch as the restaurant and the gas pumps are all part of the one property" and "dining establishments situate on main highways have not been issued liquor licences because of the closeness of gasoline pumps even though such premises are leased separately."

Counsel for the Applicant submitted that the proper interpretation of the Regulation is a reading of it as no part of a property owned or controlled by the Applicant may be used for the retail dispensing of gasoline where there is located on that property a licensed premises. The position put forward is that to be disqualified from being licensed the Applicant must own or control the property used for the retail dispensing of gasoline; that ownership or control of the property so used by someone else cannot constitute a bar.

Noting that Section 6 (1) (f) refers to non compliance of the premises and accommodation, equipment and facilities in respect of which the licence is issued and that Section 40 (n) refers to prescribing standards for premises or the part thereof used in connection with the sale of liquor... and the accommodation, equipment and facilities therein. Counsel for the applicant submitted that if the Regulation 5 (26) is to be interpreted in the manner of the Board, the Regulation would be ultra vires since the regulation making authority would apply only to the premises used by the holders of licence and not to premises used by others. He noted that the applicant does not use the premises or part thereof that are utilized for the retail dispensing of gasoline.

The Tribunal does not agree with this submission. Whether the regulation subsection is to be accepted as a term and condition of the licence, or whether it is a prescribed standard, the regulation is in fact a regulatory one setting out a certain requirement which makes certain premises ineligible to be used in connection with the sale of liquor.

The Tribunal is of the opinion that standards which may be prescribed include that of the siting of licensed premises - in other words, its relationship to any other activity.

The regulation in effect requires that the site of a licensed premises must be such that it is not part of a property used for the retail dispensing of gasoline. Is this standard to be limited to property 'owned and controlled' by the licensee, that is in the present situation, property 'owned and controlled' by the applicant as submitted by its solicitor?

Counsel for the Board did acknowledge that the words 'owned and controlled by a licensee' appeared redundant when related to 'a licensed premises' and suggested that these words modified property. Indeed it is the position of those words as set out in the Regulation that require the section to be construed as to its meaning and effect.

However, he submitted that a prohibition of licensed premises on property used for the retailing of gasoline is not dependent on ownership or control of property. The Tribunal is of the same opinion. If the criteria of the ownership and control were to apply in all cases as it would have to if adopted in this instance, that would lead to anomalous situations. It would mean that if Paneco, the owner of the total property applied for a licence, it would be barred but its lessee would not be barred. It would also mean that Quesnel if he had leased the total property would have been barred, but would not be as lessee of only the restaurant section.

If Paneco Holdings had been the party to commence the direct operation of the restaurant and had been licensed it is clear that it would have been enjoined from operating such a gas bar; if it did so its licence would be subject to revocation because the premises in respect of which the licence was issued would not comply with the regulation. Paneco Holdings if it were a licensee would also have been prevented from leasing the gas bar to a tenant for operation. And if ownership or control were the criteria it would mean that Paneco could lease the restaurant section to someone who could be licensed, then lease the gas bar section to someone else. It would create a situation which though prohibited to Paneco itself, would be permissible to others holding under it.

The Tribunal does not construe the Regulation as an intent by the Lieutenant Governor in Council to make ownership or control the significant factor in the determinations; the object and intention of the Regulation is clearly to separate the function of the sale of liquor from the sale of gasoline. This must be irrespective of who carries on the activities referred to or of the relationship of the persons to the property on which the

activities are carried on, or to each other. Ownership is not the significant factor in this regulation, the retail dispensing of gasoline is.

It is evident that the concern was not that the ownership or control of the two operations should be separate, but that the operations themselves should be so separate as to obviate the dangerous potential that might otherwise exist.

Counsel for the Board produced a policy order as an antecedent to the present regulations. However, there was a change in the standard to be applied; the change is such that a definite guidance is not provided by the order for understanding the Regulation. However, the Tribunal is of the opinion that the policy and rationale of the order as expressed by the Board, namely,

"It is to be noted that it is the policy of the Board not to licence restaurants attached to service stations with no other facilities. There are many thousands of these and the Board feels that to licence these places would not be conducive to safe driving on the highways. "

must have been the basis of the Lieutenant Governor in Council continuing a standard in this regard.

In *Nokes v. Doncaster, Amalgamated Collieries Limited* (1940) A.C. 1014, at p. 1022, Viscount Simon said:

".....if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we must avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. "

The Tribunal is of the opinion that the broadest construction should be given to the regulatory provision in issue; if a part of a property on which a licensed premises is located is being used for the retail dispensing of gasoline, the remainder cannot be related to a licensed establishment. To hold that the fact that the applicant only controls the 1400 square feet leased and that all other circumstances can be ignored, would indeed make the regulation futile. It would only apply in the one situation - that of total ownership or control, and not to a number of other situations where the physical aspects were identical.

As has been described, the restaurant operation and the gas bar operation are so interrelated as to be almost one; retail dispensing of gasoline is intermingled with the operation of the restaurant, and several significant aspects, namely, parking, lobby, washrooms, are in fact shared.

The Tribunal finds that the premises in respect of which the licence is applied for do not comply with the provisions of a Regulation applicable thereto, namely, Ontario Regulation 1008/75 Section 5 (26) and accordingly the Liquor Licence Appeal Tribunal confirms the Order of the Liquor Licence Board herein.

ROADWAY (FRIENDSHIP) INN

Application for a Dining Lounge Licence
by
Jagdat Vincent Toolsie
APPEAL FROM REFUSAL TO ISSUE

TRIBUNAL: JOHN W. ERICKSON, Q.C. ACTING CHAIRMAN
BARBARA J. SHAND and
JACK C. SIM, MEMBERS

COUNSEL: M. MAKARCHUK representing the Applicant
S.A. GRANNUM representing the Liquor Licence Board

DECISION: DECEMBER 11, 1979

Jagdat Vincent Toolsie is the Applicant for a Dining Lounge Licence in respect of premises known as the Roadway (Friendship) Inn which is situated at 60 Ormond Street North, Thorold, Ontario.

The application was dated November 23rd, 1978 and on the 27th February, 1979 the Liquor Licence Board issued a proposal wherein it proposed to refuse to issue the licence applied for for the following reasons:

- "1. By application dated the 23rd of November, 1978 the applicant applied for a dining lounge licence for the premises known as Roadway (Friendship) Inn, Thorold.
2. The fact of the application was published in the St. Catharines Standard on January 17th and January 24th, 1979 and pursuant thereto, a public meeting was held in St. Catharines on February 8th, 1979.
3. Prior to the public meeting, the Board received a letter from the Clerk of the City of Thorold advising that the Council of the City of Thorold was opposed to the granting of a liquor licence to the applicant because the location is too close to the Thorold District Secondary School and there is insufficient parking to accommodate the licensed premises.
4. Furthermore, at the public meeting, there was objections made to the Board to the granting of the said liquor licence.

5. The applicant is not entitled to a liquor licence because it is not in the public interest, having regard to the needs and wishes of the residents of the municipality."

A hearing was held in Toronto on April 10th, 1979 and continued in Thorold on May 16th, 1979. At the conclusion of the hearing the Board held:

"...was not in the public interest, having regard to the needs and wishes of the residents in the municipality in which the establishment is located, because of the close proximity of the establishment to a high school. "

It was agreed by Counsel at the outset of this hearing that the only issue involved in the hearing was the question of public interest and the needs and wishes of the public as set out in Section 6 (1) (g) of the Act which reads as follows:

"(g) in the case of an application for a licence, the issuance of the licence is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located. "

Numerous exhibits were filed which indicated that Council for the City of Thorold opposed the issuance of the licence because of the close proximity of the proposed licensed establishment to the high school. Mr. Corbett the Clerk-Collector for the City of Thorold gave evidence and placed various pieces of correspondence from the applicant Jagdat Vincent Toolsie to the City before the Tribunal together with the Council's response to the same which essentially was that it would not change its mind and was firm in its opposition to the application of the licence. Mr. Corbett indicated that Mr. Toolsie did not appear in person before Council and that Council had no other complaints other than the proximity of the proposed licensed establishment to the high school.

Mr. Corbett indicated that the premises were properly zoned for a hotel in the City of Thorold and that a liquor licence was permissible under the City's zoning by-law. Mr. Corbett further indicated that no complaints verbal or written had been received from the Police or any other agency with respect to the management of the Roadway Inn and, further, no representatives of the Board of Education or the Principal of the high school complained about the issuance of the licence.

Mr. Corbett further indicated that no complaints from citizens of the City of Thorold were received either verbally or in writing with respect to the issuance of the licence or in support of Council's decision and it is noted that there were no citizens of the City of Thorold or any of the surrounding municipalities present at the continuation of the hearing before the Board on May 16th, 1979 even though a special meeting was held for that purpose. The Tribunal further notes that no citizens of the City of Thorold appeared at the hearing before this Tribunal notwithstanding the fact that the hearing was published in the local newspaper.

In conclusion, Mr. Corbett also indicated that he was not aware of any difficulty with respect to the management of the Roadway Inn and had no evidence to offer in that regard.

Inspector N. Mileni also gave evidence on behalf of the Board and indicated that he had been the Inspector in the Thorold area for some four years. He stated that the Roadway Inn had some 26 units and was built in 1974 and at the present time had some 25 parking spots. He introduced photographs of the establishment as exhibits and produced a plan of the proposed area in the building to be used as the dining lounge. The area is located in the basement and is divided into three rooms with a total seating capacity of 80 people. Mr. Mileni gave a general description of the general area of Thorold where the proposed establishment would be located and indicated that there were sixteen licensed establishments in Thorold at the present time with approximately eight licensed establishments being within one kilometre of the local high school. Mr. Mileni's evidence made it clear that the proposed establishment would be quite close to the high school but in fairness he indicated that the downtown area was also quite close to the same school and had six licensed establishments. Mr. Mileni testified that there had been no trouble that he was aware of with respect to minors from the high school in the other licensed establishments and further that he had no personal knowledge of any complaints about the management of the Roadway Inn.

J. Vincent Toolsie gave evidence on his own behalf and gave a lengthy dissertation about his past history which included a number of business ventures including some experience in the hotel business with food and beverage. Mr. Toolsie is presently a practising lawyer in Kitchener and testified that he has run the Roadway Inn at a deficit for years. It is Mr. Toolsie's hope that a restaurant specializing in West Indian food together with a liquor licence will produce jobs for more people in his establishment, provide needed service for the guests at the Inn as well as the citizens of Thorold and presumably turn the operation known as the Roadway Inn into a profit maker. Mr. Toolsie pointed out that

the hours of operation which he was proposing would indicate that only between 12:00 noon and approximately 3:00 p.m. should there be any concern about the close proximity of the licensed establishment to the high school and that it was his intention to ensure that the rules and regulations of the Liquor Licence Act were adhered to. The Tribunal notes that no evidence was called before it to indicate otherwise.

The Tribunal further notes that even though the financial ability of Mr. Toolsie was not in issue at the hearing before it it does have some reservations about the financial viability of the proposed premises. It is also noted, however, that the question of Mr. Toolsie's financial position had not been put in issue and no evidence was called to support this proposition other than through the mouth of Mr. Toolsie himself. Mr. Toolsie also pointed to a petition which had been gathered on behalf of the application which apparently contains signatures of persons from the City of Thorold and their addresses. It has been noted in the past that the Tribunal looks on petitions with some scepticism; however the petition is some evidence that the citizenry of Thorold are not opposed to the granting of the licence.

It was agreed by Mr. Grannum and Mr. Makarchuk in argument that the onus is on the Board to show that the issuance of the licence is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is to be located. The only evidence called to satisfy that onus was the introduction of Council's resolution and the evidence of Mr. Mileni and Mr. Corbett.

The Tribunal has indicated on previous occasions that the opposition of a City Council is only one factor to be looked at and even though a resolution of Council should be accorded sufficient weight and be looked upon as an important piece of evidence the Tribunal is of the view that it must discharge its duty by looking at other factors as well. To do less would be to abdicate the Tribunal's duty to afford the applicant a fair hearing and natural justice.

In this case the Tribunal finds that it is not enough that City Council for Thorold harboured fears about the proximity of the proposed establishment to the high school. It is necessary that there also be evidence from citizens of the community to show that the granting of the licence is not in the public interest and that the needs and wishes of the public in the municipality in which the premises is located do not require this licensed establishment. The Tribunal is of the opinion that in this particular matter the resolution of Council for the City of Thorold does not satisfy that onus in itself.

The Tribunal therefore finds that the Board has not discharged the onus on it under Section 6 (1)(g) and that the applicant is entitled to a licence provided he complies in every respect with the Act and Regulations. The Tribunal therefore revokes the decision of the Board and directs the Board to issue a licence to the applicant, Jagdat Vincent Toolsie providing he complies with the Act and Regulations in all other respects.

SANGA TAVERN

Dining Lounge Licence
issued to
Sterio's Restaurants Limited
APPEAL FROM ISSUANCE OF LICENCE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON, Q.C. and
BARBARA J. SHAND, MEMBERS

COUNSEL: DAVID W. BLACK, Q.C. representing the Licensee
S.A. GRANNUM representing the Liquor Licence Board

DECISION: AUGUST 9, 1979

Sterio's Restaurants Limited is the licensee (#090168) of premises classified as a tavern and known as Sanga Tavern, 431 College Street, Toronto. The licence issued is a Dining Lounge Licence (Serial No. DL 3422) in respect of 3 rooms located:

1. Main Floor - North Section
2. Main Floor - South Section
3. Second Floor - North Section

On the 6th day of April, 1979 the Liquor Licence Board issued a Notice of Proposal to attach to the licence a term and condition to refuse to issue Special Occasion Permits for functions to be held in the North Section, Second Floor, of the licensed premises for the following reasons:

- "4. Special Occasion Permit No. S481016 was issued to Nelson Paesch on behalf of the Confederation Latino Americano Soccer Club for a function at the Sanga Tavern, on Friday, February 2nd, 1979 between 7 p.m. and 1 a.m. On the said date, liquor was sold and supplied to three female persons who were apparently under the age of nineteen years, contrary to Section 45 (2) of the Liquor Licence Act, 1975.
5. Special Occasion Permit No. S501628 was issued to R. Chini on behalf of the Venecia Social and Cultural Club for a function at the Sanga Tavern on March 3rd, 1979 between 7 p.m. and 1 a.m.

The permit holder,contrary to Section 33 (7) of the Regulations, failed to provide an adequate supply of food for persons attending the event.

6. Special Occasion Permit No. S506084 was issued to R. Ghini on behalf of the Venecia Social and Cultural Club for a function at the Sanga Tavern on March 10th, 1979 between 7 p.m. and 10 p.m.

At 11:10 on the said day, spirits, beer and wine were being sold and supplied to patrons, contrary to Section 33 (5) of the Regulations.

7. On April 18th, 1978 the licence holder had been cautioned by the Board to exercise closer supervision of the premises when Special Occasion Permit functions were being held."

After a hearing on May 3rd, 1979 the Board issued a decision to:

"attach a TERM AND CONDITION to the 'Dining Lounge Licence... that no Special Occasion Permit be issued to the licensed room located in the (North Section, Second Floor) for a period of six (6) months, or until November 1st, 1979."

This establishment, originally known as Sterio's was founded many years ago. The sole officer and shareholder of the corporation is George Tziavaras. He together with two brothers purchased all the shares of Sterio's Restaurants Limited in 1969. The three Tziavaras brothers realized the business was not sufficient to support their three families, and George Tziavaras bought out his brothers in 1976. Part of the purchase price to his brothers is still owing, as is some of the money he borrowed from the bank as a down payment.

For more than three years (1972-1975) an attempt was made to operate the second floor on a day-to-day commercial basis serving the general public. Various types of food and entertainment were tried. The second floor was not successful and usual operations were discontinued in 1976 with a total loss of approximately \$30,000.

The second floor room is suitable for special events, weddings, christenings, meetings, etc. Some of the groups or individuals using the hall choose to have their beverages and food supplied by the proprietor; in these cases beverages are sold

and served under the Dining Lounge Licence and the proprietor's staff serve. Some groups or individuals arrange to have the food supplied by the licensee and served by his staff; alcoholic beverages are supplied and served under a Special Occasion Permit. Other groups prefer to run their own show and merely rent the room. These groups provide their own food and beverages and their own serving staff; the alcoholic beverages are served under a Special Occasion Permit.

The 2 clubs referred to in the Notice of Proposal had been receiving Special Occasion Permits weekly on a continuing basis, and had run their own show with food, alcoholic beverages, service and entertainment. From October, 1978 to 30 June, 1979 the Latino Soccer Club had 45 Special Occasion Permits, and the Venecia Club had 52 permits.

The facts as set out in the Notice of Proposal were undisputed on behalf of the licensee. An inspector of the Liquor Licence Board testified that there had been no complaint made with respect to the licensee's direct operation of the licensed premises downstairs, or even of that upstairs, when in direct charge. When Special Occasion Permits began to be used in respect of the upstairs dining lounge licensed premises, the inspector had discussions with Mr. Tziavaras with respect to the service of food (the lack and inadequacy of it). During the 10 times he had attended such occasions he had noted that Tziavaras regularly came upstairs to survey the scene. He was of the opinion that there was no lack of general supervision.

Constable Williamson of the Metro Police Force, Youth Division, testified as to his attendance at the second floor at 9:30 p.m. on February 2nd, 1979 on an assignment unrelated to an inspection of the operation. Amongst 20 patrons were a male and 3 girls who, to him, were "obviously under 18". Two of the girls were drinking beer; they were 14 years of age and stated they had not been asked for identification. They pointed out the waitress who had served them: She was an employee of Nelson Paesch. There was someone on duty at the door. Constable Williamson did not speak to Tziavaras.

Constable Heather Irwing testified as to the visit of March 3rd at 9:50. She was asked for \$1.00 for admittance. Some 125 patrons were present. Though the permit specified that a buffet was to be served there was no food or anyone partaking of food in the entire room, and there was no provision for food. The person in charge, one R. Ghini on behalf of Venecia Social Club, did not appear concerned about the matter when she spoke to him. Mr. Tziavaras came upstairs with a stack of Permits and she had a discussion with him about the food service.

Constable Baker testified as to his visit on March 10th at 11:10 p.m. when some 150 patrons were present drinking mixed drinks and beer. The permit was issued for a 10 p.m. limit. Mr. Ghini on behalf of the Club permit holder stated that the time was as a result of an error in the application and he tried to place the responsibility on the Board. When Tziavaras appeared he spoke to Ghini and the activities stopped for that evening. Mr. Tziavaras was very co-operative. There was no evidence of food.

Inspector Bruce Evans of the Liquor Licence Board testified that Board policy with respect to the issuance of Special Occasion Permits in respect of Dining Lounge premises was to issue where there were separate areas under the licence so that the general public was not inconvenienced.

Mr. Tziavaras testified as to his operation of Sanga Tavern. He stated that he came upstairs every 1-1½ hours to see if anything was wrong and if so, took steps to correct it. He admitted seeing the 2 girls February 2nd but since the permit allowed the presence of minors, he took no steps or precautions. His arrangement with Venecia Club terminated in May, 1979 but Latino Club continued to have permits every Friday and Saturday. His arrangement with Latino Club continued and was for 3 months; there was an agreement for \$100 per night rental for the second floor room.

On behalf of the licensee it was submitted:

- "1. The Liquor Licence Board improperly and unfairly sought to impose complete responsibility on Sterio's Restaurants Limited for the activities carried on by permit holders who lease space from Sterio's Restaurants Limited but otherwise had no connection with or responsibility to Sterio's Restaurants Limited.
2. The Liquor Licence Board exceeded its jurisdiction in disqualifying the premises of Sterio's Restaurants Limited from being the situs of special occasion permits since no jurisdiction to qualify or disqualify the premises is given by the Liquor Licence Act or regulations, and the Liquor Licence Board in imposing the condition on a licence was improperly doing indirectly what it had no authority to do directly."

Does a licensee have any responsibility when breaches of the Act and Regulations take place during the course of an event held under a Special Occasion Permit in premises licensed under, in this case a Dining Lounge Licence?

Does the Board have authority to impose the term and condition?

Under Regulation 1 (h)

"licensed premises" means premises for which a licence or permit, as the case may be, is issued under the Act.

Under Regulation 33 (1)

The terms and conditions applicable to the holders of the licences as set out in section 5 apply 'mutatis mutandis' to holders of special occasion permits.

Under Regulation 33 (10)

The holder of a special occasion permit shall provide adequate security to ensure unauthorized persons do not attend the event and that the terms and conditions of the permit and the provisions of the Act and this Regulation are observed. O.Reg. 1008/75, s. 33 (5-10)

Under Regulation Section 5 (5a)

The holder of a licence shall ensure that evidence as to the age of the person, satisfactory to the licence holder, is obtained...

(b) prior to serving liquor to a person apparently under the age of nineteen years on any premises prescribed by section 46.

Under Regulation 46

(1) The following classes of premises are prescribed as premises on which a person under the age of nineteen may enter.

(a) premises for which ... dining lounge licence has been issued...

....

(c) premises for which a special occasion permit has been issued which states that persons under the age of nineteen years may be admitted;

Under Section 10 of the Liquor Licence Act, 1975.

(1) The Board may at any time review a licence or permit on its own initiative, and attach such further terms and conditions as, it considers proper to give effect to the purposes of this Act.

The Tribunal is of the opinion that a licensee has a responsibility in respect of the licensed premises for compliance with the Act and Regulations which is not abrogated by result of a Special Occasion Permit in respect thereof to another person.

The term and condition of Regulation 5 (5a) is clear. There was no evidence that any kind of measure by way of requiring evidence or otherwise was taken at any time and in particular on February 2nd, 1979 when Tziavaras, acting on behalf of the licensee, was aware of the presence of the two girls. That obligation of the licensee applied not only where there is direct operation but also where an arrangement has been entered into for use of the licensed premises by others.

The Tribunal is also of the opinion that there was a duty on the licensee to take steps to see that the service of food as required by the Special Occasion Permit was attended to. It must have been obvious to Tziavaras on his many visits that little if anything was done in this regard. The holder of a Dining Lounge Licence cannot disclaim responsibility as might the lessor of ordinary premises. For most of the time and for most of the patrons, the holders of the Special Occasion Permits appeared to be operating a lounge.

The Dining Lounge Licence does not go into a state of suspension in respect of the portion to be utilized for a Special Occasion Permit for the duration thereof. The licence continues and so does the responsibility of the licensee thereunder. To hold otherwise would be to permit a licensee to have all the advantages of a dining lounge with reduced responsibilities.

It is true that the Board has the authority to refuse Special Occasion Permits to applicants and so exercise control. The Board did not pursue that course with the 2 clubs that had been involved in the incidents set out.

The Board chose to ensure no further breach by restricting the issuance in respect of the premises for a 6-month period. The Tribunal is of the opinion that Section 10 (1) of the Act enables the Board to do so.

However, since the breaches were in respect of 'sale permits' issued to social clubs, and there was no evidence that any breach of the Act or Regulations had taken place in respect of 'no-sale permits' the Tribunal is of the opinion that the latter should not be restricted.

The Liquor Licence Appeal Tribunal hereby alters the decision of the Liquor Licence Board herein and orders that there be attached to the Dining Lounge Licence herein a term and condition that no Special Occasion Permits - Sale - be issued in respect of the room located in the North Section, Second Floor, for a period of six months, and directs the Board to determine the date of commencement of the period.*

* Note: the above decision was appealed to the Supreme Court of Ontario (Divisional Court).
The appeal had not been concluded
at the time of this publication.

SHANGRILA CHALET RESTAURANT

Dining Lounge Licence
issued to
Ace Submarine Limited
APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: LUCIAN MICHAELS representing Ace Submarine Limited
A.S.MICHAELS representing the Corporation of
the City of Peterborough
ROBERT DOUMANI representing the Glenwater Rate-
payers Association (Mrs. Joan Taylor)
S.A. GRANNUM representing the Liquor Licence Board

DECISION: JUNE 13, 1979

In respect of this Tribunal hearing, the Tribunal specified as parties to the proceedings, Mrs. Joan Taylor both in her personal capacity and as Secretary to the Glendale Ratepayers Association, and the City of Peterborough. Further, the Tribunal being of the opinion that it is impracticable to give notice of the hearing to all or any of the parties individually because the parties to the proceedings before it are so numerous and the interested parties could not readily be discerned, did instruct the Registrar to insert an advertisement in the Peterborough Examiner as notice to all concerned of the Appointment for and Notice of this hearing.

The application was initiated in January, 1978. A preliminary survey was made for the Board on 30th January, 1978. A letter dated June 30th was sent to Mr. S. Hendry, Clerk of the Municipality, informing Council of a pending application for a liquor licence on the property in question.

After an advertisement in the Peterborough Examiner a public meeting was held by the Board in Peterborough on December 6th, 1978. There had been no communication from City Council and no one appeared on its behalf at the hearing.

There was filed a petition headed:

"The resident surrounding the Ace Submarine premises on Water Street strongly object to their application for a liquor licence. This is a quiet family area that does not need its property and children subject to the type of notice and harassment common to a drinking establishment."

Twenty-four of the 26 petitioners live on Glendale Drive which is the nearest residential street, parallel to Water Street, and the other 2 live nearby on Water Street, so that the petition emanated from persons in the area most directly affected.

The Vice-principal of the Adam Scott Collegiate wrote of concern.

Seven objectors appeared in person.

The Board summarized the position of the objectors as "concern as to possible noise from undesirable music, as well as parental objections that insofar as sale and service to minors might develop."

After the hearing, in a letter dated December 7th, the applicant's solicitor advised that the applicant would accept a licence subject to a term and condition that no live or unduly harsh music be permitted.... and that the gas pumps be removed. (It is to be noted that this latter action is required by the Regulations).

A letter dated December 13th was sent to the applicant's solicitor advising of conditional issuance. The letter was not sent to the objectors.

By letter dated December 22nd, R.B. Mills, licence officer, advised S. Hendry, Clerk of Peterborough Council, that a further hearing relative to the application was scheduled. "The purpose of the meeting is to hear further submissions from interested persons in respect of this application".

By letter dated 28 December, 1978, R.B. Mills advised the solicitor for the applicant that in reference to the approval letter of December 13th the decision was withdrawn by the Board.

Following a hearing the Board issued its decision on the 1st March, 1979:

"The decision ...has been arrived at after consideration of many factors.....The purpose of Council's being informed was to provide an opportunity for Council to make representation in writing or attend the public meeting which was duly advertised. No further information was forthcoming from Council.

However, there were at the December 6th meeting a number of citizen objectors who expressed concern as to possible noise from undesirable music, as well as parental

objections insofar as sale and service of liquor to minors might develop. A citizen petition was also presented in objection.

In addition, a letter was filed at the meeting by the Vice Principal of Adam Scott Collegiate expressing opposition on behalf of the Administration and staff but at the same time indicating that the present atmosphere of the restaurant is very warm and wholesome.

Subsequent to the public meeting on December 6th, the following letters and petitions were received."

(Some 14 items are listed).

"As a result of these late filed objections, in a letter dated December 28th, the decision indicated by the Board on December 13th was withdrawn in order to provide the citizens with an opportunity to express opinions and to assess if such objections varied in any degree from those expressed at the public meeting of December 6th."

The meeting was again convened on Tuesday, February 20th, 1979 at which time certain interesting facts were provided, as follows:

The area in question is zoned C4 in which a restaurant is a permitted use. The City of Peterborough did issue a building permit based on plans submitted by the applicant for the proposed licensed premises.

The City Council did not reply to the Board's letter prior to or at the public meeting of December 6th, 1978, but in a letter of January 16th, 1979, notice of a recommendation of the committee of the whole indicated support of the efforts of the residents of North Water Street.

Section 6 of The Liquor Licence Act indicates that an applicant is entitled to a licence with certain exceptions, one of which is the needs and wishes of the public in the municipality.

The Council, speaking for the municipality, has seen fit in its wisdom to zone this particular property C4 with a restaurant as a permitted use and further, to issue a building permit based on plans for a licensed restaurant.

In consideration of all the foregoing factors, the decision of the Board is as follows:

The Board APPROVES a Dining Lounge Licence for the Shangrila Chalet Restaurant with the following terms and conditions:

1. The removal of gas pumps from the property.
2. No live or raucous music or any music of a disquieting nature to the neighbourhood.
3. Hours of service of alcoholic beverages:
12:00 noon to 12:00 midnight, Monday to Saturday inclusive.
12:00 noon to 10:00 p.m. Sunday.
4. Complete separation with no internal communication between the fast food outlet and the licensed premises by the public.
5. Dining lounge premises to be vacated by patrons by 1 a.m."

Mrs. Joan Taylor et al, Peterborough Council and 2 citizens appealed.

The premises are situated on the west side of Water Street in the City of Peterborough. Water Street is a 4-lane thoroughfare leading from the north end of Peterborough to the centre of the City. An extensive area in this part of Peterborough is designated on the Official Plan passed in 1971 for residential use. The lands occupied by these premises were thereafter zoned Commercial (C4). Two small pockets slightly north of the premises were also zoned commercial; one is the site of a Sunoco Gas Service Station and the other site includes a Mac's Milk Store.

The premises are completely surrounded by homes on residential streets with the nearest home being some 75' to the south. The initial survey made on behalf of the Board noted the location as 'commercial', the nearest dwelling a house at a distance of approximately 200' and located across the main street, the nearest community facilities as:

Adam Scott Collegiate
Edmison Heights Public School
Fairhaven Home for the Aged
St. Stephen's Presbyterian Church

all at a distance of approximately one-half mile.

The single storey premises were originally used as a garage and subsequently the owner thereof upon permission from the City's Committee of Adjustment, converted the property to a car sales outlet. The operation was quite small with a low profile. The premises were purchased by Ace Submarine Limited in 1977 and were converted to a take-out restaurant with a small inside dining area. The service was based on those sandwiches now known as 'submarine'. The design of the applicant was to enlarge these premises and to convert them into a restaurant with two dining areas for a total of 120 persons (ultimately between 140 and 160 persons).

The Ace submarine operation was to be continued as a take-out facility with a small eating area in a separate extension of the main premises. The two operations were to be separate physically and in operation. There was to be a new patio area in a corner between the restaurant and take-out area. There would be access to and from the take-out area (Ace Submarine), but the dining lounge would only have an exit door with panic hardware leading to the patio. The restaurant would have a dance floor and bar.

The applicant had expended some \$20,000 to December 7th, 1978 and some \$10,000 between December 7th and February 1st, 1979, and \$15,000 since. The total project would cost upwards of \$250,000.

Prior to the meeting of February 20th, 19 letters objecting to the issuance were filed. They covered a variety of objections including the following comments which were repeated in similar phrasing:

- "The Ace property is completely surrounded by residential property. I cannot think of another restaurant/bar/tavern located so completely in a residential area anywhere in this or any other comparable city."
- "The property stands alone in the middle of an entirely residential area. The majority of property owners bordering on this property are concerned about the creation of a "tavern atmosphere" so close to their properties and facilities, etc."
- "As a submarine sandwich outlet, this business is the center of attraction for the young people of our community, and as I understand, it will continue to be so. It is located near schools, single family dwellings and adjacent to a busy arterial street leading to the nearby township. Along with public and secondary schools, Trent University is also nearby."

The influx of people into the area that would be attracted by the liquor license would seriously upset the ecology of the neighbourhood, and along with the unnecessary exposure to our youth, would appear to be an application that would require careful study, considering all the evident problems that could be imposed on the community."

- "A secondary school with an enrollment in excess of 1400 students is approximately one and one-half blocks away. The creation of a tavern within such a close distance to this school can only lead to problems for all concerned. Alcohol in society today is a problem, why encourage it among younger people!"
- "The connection between a tavern and a submarine restaurant conveniently located between a high school and a university is nothing more than an opportunity to create a hangout for young people attracted to this type of environment...cannot recall such establishments trespassing on all four sides into the front and backyards of an above average residential neighbourhood....This location for a tavern in my opinion is ridiculous and a blight on our river front property that was once being considered zoning as parkland."
- "As parents of children at Queen Elizabeth School, we view with great concern the recent application and subsequent approval for a liquor licence by the owner of Ace Submarine.
- At present, Ace Submarine is a well established gathering place for students, at lunch, after school and after dances. At a time when we are all so well aware of the problems with teenage drinking, to make liquor more accessible would surely be unwise. In the interest of the students, we ask you to please reject this application."
- "While the Liquor Licence Board is not charged with the ensuring that underage persons are refused service in such establishments, the Board, by controlling the location of these establishments plays no small role in the availability of liquor to underage persons. The siting of this establishment so close to a large high school constitutes a lack of sensitivity to a very real problem in our society. One need only read the paper to establish that alcohol is a problem which does not recognize an age limit of 19."

- "The area surrounding 1097 Water Street is quiet and residential and should not be subjected to the usual problems of noise and misconduct that are associated with drinking establishments."
- "We live directly across the street from this establishment and already have problems with young people causing disturbances and racing cars around the parking lot until two and three o'clock in the morning. We have no reason to believe that this will improve with the expansion of and the obtaining of a liquor licence by the Ace Submarine."
- "The type of proposed operation described by Ace indicates that the noise; rowdiness and hot-rodding already experienced by the resident will only worsen if a liquor licence is granted."
- "Any attempts to contain loud and raucous noise or music as mentioned in Mr. Mills' letter of December 13, 1978 will, in my opinion, be completely ignored."
- "A fast food outlet of this nature will attract the fast drinking crowd - undoubtedly their business will increase as will traffic offenses."
- "...granting of this licence would alter the basic nature of the neighbourhood."
- "Granting a liquor licence for this property would be extremely detrimental to the local residents."
- "This type of establishment is most unwelcome in a residential community and will result in a decline of property values for established residents in the area."
- "Peterborough is a community where commercial developments such as this can be built in areas which will cause little disruptions to those around. Let's consider these areas. The granting of a liquor licence to this applicant in this area has nothing but negative implications to our immediate community in the long term."
- "I would feel that there are enough liquor outlets in the downtown area without having this type of an establishment in the outlying areas."

Newspaper clippings were presented including one headed "DRINKING AND DRIVING.... AND DEAD" - if a disease were killing as many young people as impaired driving it would be a national emergency. Then why do so few people care."

A petition of 22 residents on Water Street was filed in objection headed:

".....Disturbances are difficult to tolerate now - with closing at 3:00 a.m.

....his property is bounded on all sides (other than the highway) by residential property. Also, re school children, the FRONT page of the Globe and Mail, 8th December, 1978 will support our deep concern in that area."

At the meeting of February 20, 1979 some 14 objectors were present in a personal or representative capacity. A petition of some 300 names was filed: many of the signatures were from the immediate and surrounding areas.

At that February 20th meeting there were filed some 6 letters expressing support from various points of view - "the north end certainly needs this type of licence to further its development" (Mac's Milk letter).

- "a family type restaurant and lounge with liquor privileges has long been overdue in the north end" (Riverview Sunoco)
- "area should benefit from such an establishment close at hand"
- "beneficial to the surrounding area"
- "for too many years we have had to travel across town for this kind of service."

Two petitions of some 75 names "not opposed" and supporting the issuance of a liquor licence were filed. It is to be noted that many of the names were from an apartment house some distance away and the remainder of the signatories were scattered at some distance.

The Tribunal hearing was attended by 2 Aldermen and some 46 persons (many from the immediate area) in opposition to and some 5 (2 from 1086 and 1191 Water Street) in support of the issuance. Mr. Peter Norris of 1018 Glendale Drive (near the premises) who had been appointed by the Glenwater Ratepayers Association to speak on their behalf reiterated most of the

objections already stated and added concerns about moral influence, safety of young children, and vandalism.

Mr. Dave Gaze, the operator of the service station at 1119 Water Street 300' north of the premises testified in favour of the issuance in that it "would help the north end" and his patrons could walk to Ace.

Mr. Andrew Stewart of Adam Scott Collegiate Insitute read into the record a letter signed in his capacity as Student Council President.

"... regarding the proposed licensing....the Student Council of Adam Scott Collegiate Vocational Institute passed a motion to the effect that, "We do support the community group who oppose licensing Ace Submarine on Water Street".

It was felt that such a liquor licence would encourage students to frequent this establishment during spares and lunch hour. The problem of alcohol abuse would only be increased.

In addition, it was believed that such an establishment has no place in a residential area.

The issue of safety was also raised. Students patronizing this licensed restaurant would no doubt use their cars. On their return to school some would be under the influence of alcohol.

We share your concern for the safety and welfare of our community."

Mr. Stewart had attended Ace Submarine a few times; he described the operation as decent and no different from other similar operations.

Mr. John McCormack, Principal of Adam Scott Collegiate, expressed his concern about the potential problems believed to arise from the accessibility of liquor if Ace Submarine were licensed, there being in his opinion 'almost no access' at the present time.

A petition signed by members of the congregation of St. Stephen's Presbyterian Church was filed. Other petitions objecting were filed.

It is to be noted that when the applicant applied on December 4, 1978 to the Committee of Adjustment for (and received) a variance with respect to the front set back the residents in the neighbourhood objected. When the Planning Committee in its consideration of a review of the Official Plan wherein the 'update'

included a proposal to designate the lands as suburban commercial the overwhelming objection of residents of Glendale Drive and Water Street area was the basis for a deletion of the proposal, and a change to medium density residential. (With respect to Sunoco's lands at 1119 Water Street the designation was changed to neighbourhood commercial - apparently without objection).

In 1974 land (400 x 80') behind the premises zoned C4 was surveyed, subdivided and purchased as an extension to lots by 8 homeowners on Glendale Drive. They are presently applying for R1 zoning for the property. A meeting had been held by a group of residents in the immediate area with the applicant's designer who made "a very good presentation" to them. In spite of this the unanimous decision by all those present was "that the application be rejected".

The preliminary survey had stated "there is no licensed establishment in the area. The nearest establishment is downtown, which is approximately two miles". Since the initial survey there was licensed following the same meeting of December 6th the Shish-Kabob Hut as a dining room a mile or so away.

Patricia Cawker, a liquor licence inspector with the Liquor Licence Board for Peterborough for 4 years, testified that in the City of Peterborough there are some 50 licensed establishments. The majority of these are in the downtown area, in a highway strip in the south of Peterborough, and in commercial and industrial locations. Only one establishment could be described as being in a residential area and that in fact was in a mall with an apartment house adjacent.

About 10 downtown licensed establishments are within 6 minutes of the premises and more licensed establishments are within seven to 10 minutes. The ready access is provided by virtue of Water Street. City Hall is but 6 minutes away. There is a licensed premises at Trent University which is some 2 miles to the north of the premises.

Evidence was placed before the Tribunal with respect to the financial position of the applicant as contemplated by subclause (i) of Section 6 (1)(c) of the Liquor Licence Act 1975 and with respect to the past conduct of Harry Voultsos, the sole director and shareholder of the applicant as contemplated by subclause (ii) of Section 6 (1)(c) of The Liquor Licence Act, 1975. In the light of the finding reached by the Tribunal with respect to the exception set forth in Section 6 (1) (g) the Tribunal makes no finding in respect of these two matters.

A considerable amount of planning opinion and evidence was given on behalf of the applicant and the City which the Tribunal has noted.

A reading of the decision of the Board leads clearly to the conclusion that the Board gave great weight to an inaction, and to certain actions of the Council of the City of Peterborough as it viewed them, namely: "Council did not reply to the Board's letter prior to or at the public meeting of December 6, 1978", "speaking for the municipality, it has seen fit in its wisdom to zone this particular property C4 with a restaurant as a permitted use and further, to issue a building permit based on plans for a licensed restaurant."

The Tribunal had the opportunity of hearing the City Clerk give testimony and believes his testimony that he had no knowledge of the receipt of the letter. He had searched for the same on December 7th and did not find it. However, the Clerk was aware of the published notice. The matter was dealt with after December 6th as a result of representations of ratepayers, resulting in the Council resolution of January 16, 1979 filed with the Board.

"That this Council supports the residents and neighbours of north Water Street in their efforts to prevent a liquor licence being issued to Ace Submarine for premises at 1097 Water Street and that a letter in this regard be sent to the Liquor Licencing Board stating Council's position".

In respect of the zoning of the property the explanation given by the City Planning Director was that the zoning was not a deliberate one as an exception to the Official Plan use but because of an existing non-conforming use, and further, that the issuance of a permit was done because in the opinion of the city officials the application therefor was in conformity with the zoning by-law and they had no alternative but to issue the permit.

Under the circumstances the Tribunal is of the opinion that the actions of the Council at no time indicated tacit or other approval of the licensing of the restaurant. The Council had clarified its position prior to the February 20th meeting.

In any event, the action of the Council is but a single factor in the consideration of an application of this nature.

The Tribunal interprets the action by the Peterborough Council as not taking any general position, nor as setting out guidelines for a continuing position in the matter of applications for liquor licences within the municipality, but merely as

supporting the residents in the neighbourhood of Water Street in their objection with respect to Shangrila Restaurant. There would appear to be an approach against licensed establishments in residential areas.

The wording of the Liquor Licence Act, 1975 (in Section 6) clearly indicates that there is an entitlement to a licence, i.e. the applicant is entitled to be issued a licence unless he comes within certain exceptions listed in Section 6 (1)(a) to (g).

The exception to entitlement set out in Paragraph (g) is "where the issuance of the licence is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located." It is a matter of judgement for the Board to determine what is 'in the public interest' and the basis of this is a "regard" by the Board "to the needs and wishes of the public in the municipality." This determination is not an easy one.

The Tribunal has heretofore held (Pros Restaurant 2 LLAT 148 at Page 155) as to what is to be considered.

There is little in the present decision of the Board with respect to the consideration and determination of the needs and wishes of the public except a reference to the applicable section (bottom Page 4) and the inference that the attachment of the terms and conditions related directly to some of the concerns expressed.

An expression as to the needs and wishes of the public in the City of Peterborough is to be gathered in the main from the drawing of a consensus from the viewpoints expressed directly and indirectly, and in many ways by members of the public.

Though many specific objections were detailed, it emerged that the underlying objection was the potential effect on the residential character of the neighbourhood, and on the young persons of that community. The concerns were sincerely and strongly held.

The Tribunal finds: The wishes expressed of what appears to be the substantial majority of a major residential area of Peterborough are clear - a licence should not be issued. There was little general and minimal local support for the issuance. Little need, and that mainly for convenience, was expressed. The Tribunal finds that the needs of the residential community involved with respect to licensed dining establishments can be fully and readily satisfied within the present licensed establishments of the city.

The Tribunal is of the opinion that the needs and wishes of those who support the issuance of a licence to Ace Submarine Limited can be satisfied at other licensed establishments within the municipality, but the needs and wishes of those who oppose the issuance can only be met by a refusal to issue the licence applied for. The Tribunal is of the opinion that the situation is exactly that envisaged by the Legislature in its enactment of Section 6 Subsection (1) Paragraph (g) of The Liquor Licence Act, 1975.

The Tribunal is empowered under Section 15 (3) to substitute its opinion for that of the Board.

The Tribunal finds that the issuance of a dining lounge licence to the applicant herein is not in the public interest having regard to the needs and wishes of the public in the Municipality of Peterborough.

THE TRIBUNAL HEREBY REVOKES the decision of the Liquor Licence Board herein, of the 1st day of March, 1979.

STAGE 212 HOTEL

Dining Lounge and Lounge Licenses
issued to
212 Dundas Street East Ltd.
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON, Q.C., and
BARBARA J. SHAND, MEMBERS

COUNSEL: TERRENCE W. CASKIE representing the Licensee
S.A. GRANNUM representing the Liquor Licence Board

DECISION: NOVEMBER 28, 1979

212 Dundas Street East Ltd., the Licensee herein, is the owner of Stage 212 Hotel, located at 212 Dundas Street East, in the City of Toronto and Kenneth P. Murray is the President of the Company. The licensed premises were, at all material times, managed by John Bruno and Norman Murray. The Licensee is the holder of Dining Lounge Licence No. 0479 and Lounge Licence No. 7881.

On the 16th day of October, 1978 the Liquor Licence Board issued a notice of proposal to suspend for a period of thirty (30) days the dining lounge licence and the lounge licence issued in respect of the premises for the following reasons:

"On September 6th, 1978, the said Norman Murray pleaded guilty and was convicted of keeping a common bawdy house on the said premises and John Bruno pleaded guilty and was convicted of permitting the premises to be used as a common bawdy house.

Management and control of the licensed premises have been delegated to the said Norman Murray and John Bruno and the licence holder is therefore in law responsible for the acts of the said persons.

For the above reasons, the past conduct of the officers of the licensee corporation afford reasonable grounds for belief that business will not be carried on in accordance with law and with integrity and honesty. "

After a hearing on December 11th, 1978, the Liquor Licence Board found that:

"..the past conduct of the Licence Holder has been in contravention of the Act and Regulations appurtenant thereto, the particulars of which are set forth in its 'Notice of Proposal' bearing date October 16th, 1978. "

and order that:

"..the aforesaid Licences, namely, the 'Dining Lounge' and 'Lounge' Licences granted to 212 Dundas Street East Ltd., in respect of the Stage 212 Hotel, be "SUSPENDED" for the period commencing at the opening hour on MONDAY, JANUARY 1ST, 1979, and to continue in effect until the opening hour on MONDAY, JANUARY 22ND, 1979."

The hearing before the Tribunal was delayed from time to time to allow other Courts to hear and dispose of certain charges considered to be relevant to the matters before the Tribunal. The Tribunal wishes to note that a stay or adjournment of proceedings before it shall not be automatic where there are criminal charges pending against parties before the Tribunal unless prejudice is apparent.

At the outset of the hearing Counsel for the Board and for the Licensee introduced certificates of conviction dated September 6th, 1978 with respect to Norman Albert Murray and John Gennaro Bruno. There is no issue with respect to the certificates and they were introduced as exhibits on consent. The convictions relate to charges against the individuals as follows:

As against John Gennaro Bruno:

"unlawfully did being the owner or person having charge or control of premises known as STAGE 212, at 212 Dundas Street East, Toronto permit such premises or a part of such premises to be let or used for the purpose of a common bawdy house."

As against Norman Albert Murray:

"did keep a common bawdy house at Stage 212, 212 Dundas Street, East, Toronto."

The certificates indicate that pleas of guilty were entered to the charges.

Inspector Leslie of the Liquor Licence Board testified that the establishment was visited by him since January 2nd, 1979 an average of three times per month. He indicated that the hotel had been called the Westover Hotel before its name was changed to Stage 212. He described the location of the dining lounge and lounges and stated that a lounge and dining lounge are located on what he described as the basement level while there is an additional lounge at street level at the north end of the building. No evidence was introduced concerning any objectionable activity at the north end lounge.

The Inspector testified that there were sixty-four (64) rooms in the establishment although he was of the opinion that not all were in use at the time of the hearing. The establishment is in a rough neighbourhood according to the Inspector although it has been cleaned up to some extent. He stated that the hotel was frequented by businessmen and others and that during his visits he discussed the operations with Mr. Kenneth Murray and others and received the full co-operation from the staff of the hotel. He testified that there was no problem in terms of compliance with the Act and Regulations that he was able to observe and that the hotel was as well run as any other establishment that he visited. He stated that he had no personal knowledge of the incidents referred to in the Notice of Proposal filed by the Board and further had no personal knowledge with respect to any subsequent allegations. He did say that when he visited the premises he saw no signs of solicitation and based his opinion on the fact that he had been with the Metropolitan Police Force for some twenty-nine (29) years.

Sgt. Thomas Stephen was called by the Board and indicated that he was a twenty-seven (27) year veteran of the Metro Toronto Police Force with the last ten (10) years being spent in the Morality Squad. His testimony concerned monitoring of the licensed premises on a number of occasions together with some personal visits and can be summarized as follows:

July 8th, 1977 - Stephen attended at the premises on a Friday afternoon at about 2:00 p.m. and asked to see Ken Murray, the owner. He also met an individual by the name of John Bruno and had a lengthy conversation with him and Mr. Murray. Stephen testified that he told Mr. Murray that the hotel was being used as a bawdy house and that he cautioned Ken Murray. Stephen said that Ken Murray responded by saying that he had fired all of the old waitresses and waiters and was attempting to clean the place up. Stephen also said that Bruno asked for time to allow the hotel to take steps to compensate for the loss of room revenue which would result if prostitution was stopped in the premises. Stephen indicates that a request was made for the police to 'cool it' while changes were made to the operations of the hotel.

August 17th, 1977 - Stephen again attended and spoke to John Bruno. Stephen said that Bruno indicated that they had tried to cut down on the action but that they were in a financial bind. Mr. Bruno suggested that separate entrances were being arranged to help alleviate the problem and Mr. Stephen stated that he disagreed with the suggestion since it might only hinder or thwart the police. Mr. Bruno asked for a few more weeks' grace to get rid of the "hookers" or else the hotel would go under. Mr. Stephen indicated that he did not agree to any extension.

March 9th, 1978 - Sgt. Stephen indicated that during March two undercover men had spent some time monitoring comings and goings at Stage 212. A raid was conducted on March 9th, 1978 by some thirty (30) officers and a number of men were charged as found-ins while Norman Murray, John Bruno and others were also charged as keepers of common bawdy houses. A whole series of people were charged which ultimately led to pleas being entered by two women and by Norman Murray and John Bruno as previously mentioned.

Apparently it was as a result of the raid on March 9th, 1978 that the Liquor Licence Board took action and forwarded its proposal to suspend the licence. Prior to the Board forwarding its Notice of Proposal a further raid took place on August 30th, 1978 at which time charges were laid against a number of individuals including Kenneth Murray but all were subsequently acquitted.

The evidence further indicates that an additional raid took place on December 21st, 1978 but to date the charges are still pending and have not been disposed of.

Sgt. Stephen indicated that he also conducted additional monitoring as follows:

January 5th, 1979 - He stated that he went back at 9:30 p.m. in the evening and encountered one William Catalano who was in charge. Sgt. Stephen described Catalano as an individual with an unsavoury reputation and states that Catalano introduced himself to Sgt. Stephen as the manager. Stephen indicates that his surveillance indicated that there was a woman who was a known prostitute who was told to leave on that evening.

January 6th, 1979 - Stephen attended at 11:00 p.m. and again Catalano represented himself to be the manager. Stephen indicated that two lone women were in the bar, both being well-known to him as prostitutes. He states that he told both of them to leave and also told the manager about their presence.

January 31st, 1979 - Stephen attended with Constable Dove at midnight. Ken Murray was there and Stephen indicates that he spoke to Ken Murray and said that there were four women in the bar who were all active prostitutes. Stephen indicates that Ken Murray told him that it was not his responsibility to tell the prostitutes to leave but that that was Stephen's job. Stephen indicates that he cautioned Ken Murray and felt that Ken Murray was not very co-operative.

April 24th, 1979 - When Stephen attended on this occasion a Russ Castle was manager and Ken Murray was not there. He states that John Bruno came in and stated that he was filling in while Ken Murray was at home suffering from nervous exhaustion. John Bruno indicated to Stephen that the hotel keys for the bedrooms were now being more closely controlled and monitored but Stephen stated that it was his view that this in fact might have been one way to conceal which rooms were being rented for the purpose of prostitution.

September 29th, 1979 - Stephen attended at 10:00 p.m. and again encountered Russ Castle and sat in the lounge with him. He states there were five other lone women who upon seeing the surveillance went to a washroom and stayed for five (5) minutes and then left the premises altogether.

Sgt. Stephen states that in his opinion the hotel has a reputation of being a place where you can pick up a prostitute and is in a well-known red-light district.

In cross-examination, Mr. Caskie, Counsel for the Licensee questioned the objectivity of Sgt. Stephen and suggested that he harboured a bias against the owner of the premises, Ken Murray. Mr. Caskie led Sgt. Stephen through changes which were made to the premises including the institution of rules of conduct which were issued to the staff and better security with respect to ingress and egress to the hotel bedrooms. Sgt. Stephen refused to acknowledge that the changes made would result in better control and theorized that they could also be used to hinder police efforts to control prostitution at Stage 212.

Kenneth Murray testified on behalf of the company and presented himself as a married man with three children. He indicated that he purchased the premises in 1975 when the licensed rooms were not being operated and proceeded to conduct certain conversations with representatives of the Liquor Licence Board and the Morality Squad of the Metro Toronto Police. He testified that as a result of his conversations he received advice as to how to run the premises. It is the Tribunal's view that this evidence is indicative of the fact that Mr. Murray knew at the very beginning

what the reputation of the premises was and this becomes relevant in assessing his evidence as against the evidence of Sgt. Stephen. Mr. Murray also testified that substantial sums were expended by him in renovating the hotel including the bedrooms. He told of his efforts to institute a new entertainment policy including big name jazz musicians. It appears that after a short period of time and substantial losses he eventually went back to striptease. Mr. Murray testified that the hotel employs some twenty-two (22) to twenty-six (26) people and that his wife now acts basically as the general manager on a daily basis while he is there daily as well. Mr. Murray disputed Sgt. Stephen's version of a meeting where Sgt. Stephen said Ken Murray and John Bruno had asked for time and had asked the police to 'cool it'. He said he felt there were problems but at no time did he use the words attributed to him by Sgt. Stephen and appears to have no recollection of Bruno using the words. Mr. Murray admits that there were problems with prostitution but his relationship with the police was always good and he attempted to co-operate. Mr. Murray testified that he has gone through numerous managers and desk clerks and requested a meeting with the police in 1978 because he thought he was being harrassed by Sgt. Stephen and the Morality Squad. Mr. Murray further stated that he has been attempting to sell the business but has been unsuccessful to date.

Mr. Murray states that even though prostitutes have been in his premises his modifications to the ingress and egress of the premises have been aimed at making access to the bedrooms difficult if not impossible and he disagrees that there was the frequency of use of the bedrooms as stated by Sgt. Stephen.

Ruth Murray, the wife of Kenneth Murray, testified that she is essentially the general manager of the premises and now works with her husband as part of a management team. She states that the premises have had poor publicity because of charges laid against it and only now is the establishment making ends meet to the point where the financial pressure is off. She states that if the suspension of the Board was implemented it would lead to financial ruin.

In addition to the witnesses called by Mr. Caskie, he also chose to introduce by way of transcript evidence on consent the remarks of His Honour Judge Ross when sentencing John Bruno on September 6th, 1978 and when acquitting Kenneth Murray and others on charges of keeping a common bawdy house. These latter charges arose out of a raid which took place on August 23rd, 1978 which was referred to earlier in the summary of Sgt. Stephen's evidence.

The Tribunal has had the opportunity to assess the witness Stephen by viewing his demeanour in the witness box and his responses to questions in examination-in-chief and cross-examination and find that his evidence has been uncontradicted in most material respects. The Tribunal is further of the view that the suggestion or allegation of bias or harrassment has not been amply established by the Licensee or supported by evidence called on behalf of the Licensee. The Tribunal is of the opinion that if anything the officer was acting responsibly given the events that transpired over a lengthy period of time and is not prepared to accept the Licensee's suggestion that there was harrassment or bias on the part of Sgt. Stephen.

Mr. Caskie urged the Tribunal to find that the Licensee had achieved compliance as set out in Section 16 (2) of the Act. The Tribunal is of the view that this section is inapplicable to this kind of factual situation but even if the section did have some application the argument would not succeed in the Tribunal's opinion because of the following factors:

- (a) The Licensee knew the reputation of the establishment in 1975 but yet there is ample evidence to infer that prostitution carried on in the premises unabated for a substantial period of time after the Licensee acquired the premises.
- (b) The surveillance which was carried out and the numerous visits by Sgt. Stephen during the summer of 1977 to March of 1978 strongly indicate that the premises were being used as a bawdy house.
- (c) It is possible to draw an inference from the reasons of His Honour Judge Ross in his sentencing of John Bruno which support the evidence of Sgt. Stephen that in fact the premises were being used as a bawdy house.
- (d) The reasons for acquittal rendered by His Honour Judge Ross while not supporting the criminal onus necessary to support a conviction under those charges still contain information which would allow the Tribunal to infer that prostitution was going on at the Stage 212 Hotel even though numerous visits by representatives of the Morality Squad and a raid by the Metro Toronto Police had already taken place during the period August 1977 to March of 1978. The charges being dealt with by

Judge Ross concerned a raid in August of 1978 indicating that the effect of the surveillance and police activity on the Licensee may well have been minimal.

- (e) The sum total of the evidence filed by the Board casts doubt on the success of the Licensee in dealing with the problem.

The Tribunal therefore is of the view that the Licensee is in contravention of Section 6 (1) (c) (ii) of the Act which states as follows:

"the past conduct of its officers or directors or of a shareholder who owns or controls 10 per cent or more of its issued and outstanding equity shares as determined under section 20 affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty,"

and confirms the decision of the Liquor Licence Board dated December 11th, 1978, and directs the Board to set the exact period of suspension.

STARS RESTAURANT, Brampton

Dining Lounge Licence
issued to
371800 Ontario Limited
APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: JOHN W. ERICKSON, Q.C., VICE-CHAIRMAN
as CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: R.E. PROUSE, Q.C. representing the Licensee
S.A. GRANNUM representing the Liquor Licence Board

DECISION: NOVEMBER 27, 1979

371800 Ontario Limited is the licensee #021019 of the establishment classified as a restaurant with a Dining Lounge Licence and known as Stars Restaurant, 107 Kennedy Road South, Brampton.

After a hearing on July 26th, 1979, the Board found a contravention of Section 6, Subsection (5)(a) of Regulation 1008/75 under The Liquor Licence Act, 1975, and ordered that:

"commencing MONDAY, AUGUST 13th, 1979, there shall be attached to the said Licence the "TERM and CONDITION" that the sale of alcoholic beverages in the Dining Lounge of Stars Restaurant shall CEASE at 10:00 p.m. daily until such time as the requirements of Section 6, Subsection (5)(a) of Regulation 1008/75 are met."

After the Tribunal hearing upon consent, the Tribunal ordered and directed as follows:

1. That the Liquor Licence Board of Ontario proceed with the pending application for transfer of licence No. 021019 to Bill Kanellopoulos at its earliest opportunity.
2. That concurrent with the hearing of the application for transfer that the Board reconsider its Order dated the 26th day of July, 1979 which attached a Term and Condition to the Dining Lounge licence.

3. Until the Board conducts the above-mentioned hearings the Licensee shall be entitled to conduct the sale and service of liquor in its establishment during the hours prescribed by Section 6 of Ontario Regulation 1008/75 under The Liquor Licence Act, 1975."

UNDERMOUNT TAVERN

Dining Lounge Licence
 issued to
 360514 Ontario Limited
 APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
 JACK C. SIM and
 BARBARA J. SHAND, MEMBERS

COUNSEL: TIMOTHY A CULVER representing the Licensee
 S.A. GRANNUM representing the Liquor Licence Board

DECISION: JANUARY 18, 1979

360514 Ontario Limited is the Licensee (#090671) of the establishment classified as a tavern known as Undermount Tavern located at 143 James Street South, Hamilton.

The licences issued are as follows:

Dining Lounge Licence
 in respect of Main Floor, East Section

Patio Licence
 in respect of Dining Lounge, Main Floor,
 North Section, outdoor area.

On the 26th day of July, 1978, the Liquor Licence Board issued a Proposal:

"to attach to the dining lounge and patio dining lounge licence(s) for the above-named establishment a TERM and CONDITION that the sale and service of liquor in the establishment shall cease at 10:00 p.m.

FOR THE FOLLOWING REASONS:

The licensee is carrying on activities that are in contravention of Section 6, subsection (5) of Regulation 1008/75 under The Liquor Licence Act, 1975 and in particular, the total receipts from the sale of liquor in the dining lounge have exceeded the total receipts from the sale of food in each month during the period commencing August, 1977 and ending June, 1978. "

The licence holder filed with the Board a statement of gross sales of food and liquor.

After a hearing on 21 September, 1978, the Board found a contravention of Regulation 1008/75 Sec.6 Subsection (5)(a) and attached a condition to the licence that:

"the sale of alcoholic beverages in the 'Dining Lounge' of Undermount Tavern shall CEASE at 10:00 p.m. daily until such time as the requirements of Section 6, subsection (5) (a) of Regulation 1008/75 are satisfied."

The licensee acquired the operation and a lease of the premises on July 29, 1977.

The two principals are engaged on a full-time basis in the operation, splitting a 7:30 a.m. to 1:30 a.m. working day and alternating shifts weekly; one is Manager and Bartender and the other is bookkeeper and bartender. The latter has been involved in the restaurant business for some 20 years, having managed a well-known dining room in Hamilton for some time.

The establishment is located on the east side of James Street South in the City of Hamilton in an area which is located just south of the downtown core. The area of the establishment and the downtown core are divided by the T H & B Railway tracks and subway on and over James Street. The establishment is situate on the ground floor of a 15-storey office building which houses approximately 300 people in the building only during the day. Adjoining the subject office building on the north is another office building comprised of some 15 floors having like characteristics. In September, 1978 the Canada Manpower Offices which employ 100 people closed down their offices in the same building as the establishment and moved to premises elsewhere in Hamilton and not in proximity to the establishment. As mentioned above, immediately to the north of the establishment are the T H & B Railway lines subway, tracks and train station. If not a business division there is at least a geographical division from the downtown core area by such tracks and subway.

To the east of the establishment, there is a run-down residential area that has, in the last two years, been gradually moving into commercial development for professional offices, boutiques and the like. To the west of the establishment is an old residential area that has been converted into apartment buildings and multiple family dwellings of different kinds.

To the south of the establishment, is generally the same form of development as is to the west of the establishment. The residential area is of high density.

The establishment is open for the serving of food, including breakfast from 7:30 a.m. and closed six nights per week - (closed Sunday) at 1:00 a.m. The serving of alcoholic beverages commences at 12:00 noon. There is no entertainment of any kind: music is piped in.

The patronage of the establishment is of good calibre, well behaved, and is as follows:

(i) During the period from 7:30 to 12:00 noon, the patronage is made up of office personnel coming in for coffee, toast, doughnuts, pastry, etc. There is very little full breakfast serving with the result that the amount of each of the morning orders is small, i.e. bacon and eggs is \$1.75, toast and coffee is 60¢. The crowd that comes in for coffee, etc. in the morning is a fairly regular crowd.

(ii) Starting at 12:00 noon, the food menu is made up of two specials (\$2.25 to \$2.75) plus the regular menu (\$1.25 to \$5.95). Lunchtime sales are approximately \$1.50 average. There is little alcoholic consumption at lunchtime and this consumption is 80% bottled beer, 10% draft beer, and the remainder various liquor drinks. The crowd that comes in for lunch is a fairly regular crowd. On January 4th at 1:30 p.m. there were 30 patrons and the majority were eating. Lunchtime activity starts at 12:00 noon and generally is finished by 2:00 p.m. The volume of food served is substantial in comparison with other places since the price is reasonable. But because the prices are reasonably low the balance is more difficult to attain. The price structure is comparable to one other in the area.

(iii) From 2:00 p.m. to 4:00 p.m. is the afternoon coffee break crowd who are again regulars and come in for coffee, tea, etc. The average account is 30¢.

(iv) The next period that is definable commences about 4:30 p.m. Monday to Friday, and continues to about 6:30 p.m. It consists of local office people coming in for a drink before going home and people who work elsewhere and who are on their way home and stop in for a drink. Most of the drinks consist of beer, bottled or draft. Between 6:30 and 8:30 p.m. this pattern continues. However liquor and beer sales drop considerably. A few of these people buy sandwiches. On 20 September, between 5:15 p.m. and 7 p.m. out of 29 patrons, only 8 ordered food.

(v) At 8:30 p.m. a different crowd comes in and these patrons are made up of a 20 to 30 age group, mostly locals, some outsiders who are there primarily for drinking. They are neatly attired, some jeans, not a rough crowd and the mix is about 70% males and 30% females. For example, on the 21 July, 1978 between 8:40 and 9:40 when the dining room was full none of the patrons were eating, though food was available.

(vi) Because the office buildings are closed, Saturday is very slow.

(vii) The foregoing have been consistent through the period August 1st, 1977 to October 16, 1978.

Since August 1st, 1977 the personnel have consisted of the following:

(i) Five full-time waitresses working shifts from 7:30 a.m. to 1:00 a.m.

(ii) One male part-time bar helper, Thursday to Saturday.

(iii) Three people in the kitchen, namely, 1 cook, 1 assistant cook and 1 dishwasher. There have been three changes in the cooks for various reasons.

(iv) Apart from the problems in the kitchen, the other staff has been fairly constant.

This establishment has had difficulty meeting the required food/liquor balance from its opening in 1968. It acquired a reputation as being a drinking place. The food served prior to the present operators was of a low standard. Competition from other licensed establishments is great. There are 4 other dining lounges within a radius of 3 blocks, including a Chamber of Commerce Club which has a lounge. Two of the establishments are disco operations. A few blocks further there are other licensed establishments including 3 from major chains.

The present operators were aware of the situation: indeed, they had been warned of the imbalance by the Board at the time of purchase. They were confident that they could change the situation. It was further acknowledged that they had been warned about the imbalance in April, 1978. They were under the impression they would be given some time to achieve the change.

There is no doubt about the sincerity or determination of the management before and after the Board hearing to establish the restaurant as an eating place: the emphasis placed by them

was on food at reasonable prices, and on personalized service. Prior to the Board hearing they had installed new equipment for the service of food.

Because of their financial situation they were unable to do all they planned at once. They were concerned about bringing about drastic changes quickly as that would create a situation where they might lose old patrons in the adjustment period and would not have yet acquired new patrons.

Evidence was given by inspectors and investigators of the Liquor Licence Board that food was always available for the kitchen was never closed. The freezer was filled with small steaks, cold meats, vegetables - typical of a well-run restaurant.

The food was always very good though not of an elaborate nature. The facilities, service and menu were those of a dining room and that was the atmosphere during the lunch period. At lunch, all tables had table cloths. However, though food was available in the evening, there was difficulty in selling food; the atmosphere was different, for the interest of patrons was not that of dining.

After the Board hearing the licensee instituted significant changes. Attractively produced breakfast and dinner menus were put out; the bill of fare was varied and up-graded, prices became higher. Luncheon specials were attached to the regular menus. The menu emphasized the fact that the establishment is a dining lounge.

Starting October 1st, 1978 two additional kitchen personnel were hired to work at times during the period from 3:00 p.m. to 1:00 a.m. to assist in the preparation and serving of food in an attempt to bolster the food sales.

During October and November, 1978 at considerable cost, the appellant inserted in the Hamilton Spectator an eye-catching advertisement of its new emphasis on food indicating hours, specialties available at lunch and dinner.

As of October 16th, 1978 there was imposed a \$1.00 minimum food charge from 8 a.m. to 1 a.m. from Thursday, Friday and Saturday of each week. Initially patrons were lost but the balance was assisted. Master Charge and Visa Charge became acceptable. The efforts have brought about results. The figures for the months following the Board hearing were -

<u>Month</u>	<u>Total Food Sales</u>	<u>%</u>	<u>Total Liquor Sales</u>	<u>%</u>
September	\$10,483.29	41	\$14,843.38	59
October	12,234.74	48	12,998.81	52
November	12,529.69	49	13,221.35	51

During the first six days of January, receipts from food of \$2,100.00 exceeded receipts from liquor, \$1,913.00 and it appears that a trend has been established.

An unsolicited article in the December, 1978 issue of the Magazine "Hamilton", testifies as to the change in reputation to being a place to eat, for it states:

"Another tavern worth visiting for a good solid meal is the Undermount, which is located at the foot of an office building on James St. South. The Undermount is one of my favourite watering-holes, but the food used to be a crime against humanity. Recently, however, the menu was changed and now offers an adequate selection of dishes, the best of which is a steak dinner for \$3.60 that includes a salad, onion rings, potato, vegetable and a hot roll and butter."

The wish of the licensee is to expand the operation into a recently available adjacent area by setting up a separated dining room, well appointed, not crowded, to serve a limited menu in the \$7 to \$8 range in order to attract a good dining crowd from the residential neighbouring area. It was believed that the food proportion could be about 75%. The expansion would also increase storage space, the lack of which is presently a handicap. The new attractive facilities with a continuation of the luncheon trade could bring about a well-rounded dining establishment and compliance with the regulation.

The Tribunal reiterates its opinion that relevant criteria should be used as a basis if the exercise of discretion is to be in favour of the licensee. They are:

1. The operation by the licensee is a bona fide restaurant (food) operation.
2. Reasonable efforts are being made by the licensee to meet the requirement of the regulation.
3. Reasonable success toward the goal of meeting the requirements in a reasonable period of time is being had.

There must, of course, be compliance in due course.

In respect of the operation of Undermount Tavern the facts as found by the Tribunal show clearly -

1. It is a bona fide restaurant - the menu, the facilities, the service all indicate this.
2. Reasonable efforts and innovations are being made.
3. Success in increasing receipts from the sale of food is being had, namely, increasing from 41% for the month of August prior to the Board hearing, to 49% for the month of December prior to the Tribunal hearing.

The Tribunal is of the opinion that the approach in the present situation should be not to require the licensee under the circumstances of this case to demonstrate compliance under a handicap but to allow the licensee more time to demonstrate a continuing ability to comply with the section. The onus will continue to be on the licensee to comply or have the restricted hours attached as a term and condition of the licence.

The Tribunal altered the decision of the Board to read:

" commencing Monday, the 19th day of March, 1979, there shall be attached to the said licence the term and condition that the sale of alcoholic beverages in the 'Dining Lounge' of Undermount Tavern shall cease at 10:00 p.m. daily until such time as the requirements of Section 6 Subsection (5)(a) of Regulation 1008/75 are met provided that if the total receipts from the sale of liquor and food during each of the months, January and February, 1979 are in conformity with the said section the said term and condition shall not at that time become effective, but shall become effective on the 19th day of the month following the first month thereafter that the said requirements are not met, and a further condition that the area inspector be provided with monthly reports relevant to food and liquor sales in these premises until further notice. "

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Liquor Licence Appeal Tribunal

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Summaries of Decisions
Volume 4 (1980)



<u>Name of Establishment</u>		<u>Page</u>
Toronto Area Gays	Refusal to Issue Permit	117
Town Manor Motor Hotel	Suspension	120
Turning Point Tavern	Revocation	123
Upstairs Restaurant	Terms and Conditions	126
Westminster Hotel	Suspension	131
Westport Hotel	Refusal to Issue	138
Willy's Restaurant	Terms and Conditions	140
Woodshed Restaurant and Tavern	Suspension	144

LIQUOR LICENCE APPEAL TRIBUNAL
CROSS INDEX TO VOLUME 4

<u>Licensee or Applicant</u>	<u>Page</u>
Alaica, Daniel and Tomka (Shawnee Tavern & Steakhouse)	107
Ahmad, Salim (Lalazar Restaurant)	47
Avruskin, Milton (Bannister's Tavern)	5
Berndt, James and Patricia (Central Hotel)	20
Bordeaux Restaurant Limited (Bordeaux Restaurant)	15
Butt, Terry (Bannister's Tavern)	5
Chatsworth Hotel Limited (Chatsworth Hotel)	24
Cooper, Sally (Scollard Restaurant)	103
Elaine's Inns Incorporated (Elaine's Restaurant)	28
Estaminet Investments Limited (Estaminet Tavern)	31
Gardner, Donald (Bannister's Tavern)	5
Gregg, J. Patrick and Annie (Turning Point Tavern)	123
Harris, L.O. Holdings Limited (Westport Hotel)	138
Herman Kassinger Charitable Foundation (Rossland Park Country Club)	101
Hoehnder Restaurants Limited (Upstairs Restaurant)	126
J. & P. Hotel Holdings (Toronto) Limited (Stafford Tavern)	109
Keukenhof Limited (Paragon Restaurant)	78

<u>Licensee or Applicant</u>	<u>Page</u>
Legakis, John and Alexandra (Three-Star Restaurant)	115
Lighthouse Discotheque Limited (Lighthouse Restaurant)	61
Lafrance, Ruth Lumley, Norma (St. Regis Hotel)	114
McCallion, Peter (Bannister's Tavern)	5
Meanchopoulos, George, Chris and Bill (Nevada Restaurant)	71
Muckle, S.L. and Associates Limited (Muckle's Tavern)	69
Natural Gourmet (Barrie) Limited (Oscar's On-The-Bay)	75
Ouzounis, Vasilios (William) (Pros Restaurant)	91 98
Pachis Holdings Ltd. (Woodshed Restaurant & Tavern)	144
Palumbo, Ottaviano (Misty Blue Restaurant & Tavern)	67
Parentela, Giuseppe (La Stella Restaurant)	52
Phoenix, Barry (Bannister's Tavern)	5
Schroeter, Manfred (Loading Zone Restaurant)	63
Schwepol Holdings Limited (Karlin Hotel)	44
Theologus, George and Maria (Three-Star Restaurant)	115
389266 Ontario Ltd. (Ballpark Restaurant)	1
349842 Ontario Inc. (Barrymore's Restaurant)	10

<u>Licensee or Applicant</u>	<u>Page</u>
T.M. Hotels Inc. (Town Manor Motor Hotel)	120
Waheed, Raja (Lalazar Restaurant)	47
Westminster Hotel Limited (Westminster Hotel)	131
Wiedeman, Max Limited (Graystone Tavern)	40
Willy's Tavern Limited (Willy's Restaurants)	140

NOTES ON APPEALS FROM TRIBUNAL DECISIONS
TO SUPREME COURT OF ONTARIO
DIVISIONAL COURT

Name of Establishment

Bannister's Tavern Appeal proceeding	4	L.L.A.T.	5
Beef Baron Appeal proceeding	3	L.L.A.T.	20
Bluescooner Restaurant Appeal proceeding	3	L.L.A.T.	30
Bordeaux Restaurant Appeal dismissed	3	L.L.A.T.	36
Graystone Tavern Appeal proceeding	4	L.L.A.T.	40
Loading Zone Restaurant Appeal proceeding	4	L.L.A.T.	63
Sanga Tavern Appeal dismissed	3	L.L.A.T.	110
Upstairs Restaurant Appeal proceeding	4	L.L.A.T.	126
Westminster Hotel Appeal proceeding	4	L.L.A.T.	131

BALLPARK RESTAURANT

Dining Lounge Licence
issued to
389266 ONTARIO LTD.
APPEAL FROM ORDER ATTACHING TERMS AND
CONDITIONS

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE-CHAIRMAN
AS CHAIRMAN
BARBARA J. SHAND and
M. GALE MCAULEY, MEMBERS

COUNSEL: R.F. MILLER, representing the Licensee
S.A. GRANNUM, representing the Liquor
Licence Board

DECISION: November 13, 1980

389266 Ontario Ltd. is the Licensee and
holder of Dining Lounge Licence No. 021463. The officers and
directors of the said corporation are:

Regional J. Grossi, President
Reginald L. Grossi, Vice President
Leonard A. Grossi, Secretary
Joseph M. Grossi, Treasurer

The licensed premises are located on the
main floor of a one-storey building and have a seating capacity
of 74 persons. Adjoining and connected to the licensed premises
is an unlicensed coffee shop which is also owned and controlled
by the Licence holder. Both the licensed and unlicensed premises
are inter-accessible and share a common kitchen area.

On February 13, 1980, the Liquor Licence
Board issued a Notice of Proposal to suspend for a period of
30 days the liquor licence held by the Licence holder for the
above-named establishment and thereafter to attach to the said
Licence a Term and Condition that the sale and service of
liquor in the establishment shall cease at 9:00 p.m. until
further ordered by the Board.

The following reasons for the above
proposed suspension and Term and Condition were given:

"The past conduct of the Licence holder affords reasonable grounds for the belief that business will not be carried on in accordance with the law, integrity and honesty because:

(a) The Licence holder has, contrary to Section 55 (1) (a) of the Liquor Licence Act, knowingly furnished false information in Statements required to be furnished to the Board, namely statements of the gross receipts from the sales of food and liquor.

(b) Contrary to Section 6(5) of the Regulations under the Act, the total receipts from the sale of liquor in any month have exceeded the total receipts from the sale of food in the same month.

As of December 6, 1979, the Licence holder applied to the Board for additional licensed facilities, consisting of the unlicensed coffee shop (Reggie's) adjoining the Dining Lounge (Ballpark). On February 5, 1980, a public meeting was held in St. Catharines to hear representations from members of the public concerning the licensing of the additional premises, but no public opposition was presented to this meeting.

At a Hearing of the Liquor Licence Board on March 27th, 1980, the Board indicated that it was satisfied that the Licensee had knowingly furnished false statements as to the gross receipts from the sales of food and liquor, and additionally that the total receipts from the sale of liquor had exceeded the total receipts from the sale of food during the period, January 1st, 1979, to October 31, 1979. The Board's Order was given as follows:

"Commencing Monday, April 14th, 1980, a 'Term and Condition will be attached to the 'Dining Lounge' Licence' of the Ballpark Restaurant, more particularly the sale and service of alcoholic beverages in the 'Dining Lounge' will cease at 9:00 p.m. daily until such time as the food/liquor ratio is in conformity with Section 6, subsection 5(a) of Regulation 1008/75 under the Liquor Licence Act, 1975, to the satisfaction of the Board."

At the Board Hearing evidence was given that the figures concerning food/liquor as reported by the Licence holder did not agree with the journalized sales, and a comparative chart was submitted, and included sales tax.

The premises were monitored for two days in December, 6th and 7th, 1979.

The Ballpark Restaurant presently operates in Unit A-2, Block A, First Floor, Pendale Shopping Centre, St. Catharines, Ontario. The "Reggie's" outlet, referred to above, is located in the immediately adjoining Unit A-3, and presently both units are being operated under the Ballpark Restaurant. Both outlets use a common menu and common kitchen facilities and vestibule. The theme of the operation is the game of baseball with various baseball posters, cards and equipment displaced throughout. The intent of the licensee has been to attract customers who wish to watch television sports on the seven foot television screen located on the premises.

At the Tribunal Hearing evidence was given that the kitchen facilities and menu were in order, and that the general operation was that of a well-run self-serve outlet. The Board's inspector, in fairness to the Licensee, outlining the many changes made since the Board Hearing, including extension of the menu, encouragement of food sales, the Licensee's proposal to increase the capacity of the establishment, and indicated that this Licence holder had, in his opinion, made a sincere effort to promote food sales. Indicative of this was the fact that, since May 1980, more food than liquor had been served.

In his evidence, the President of the Licence holder corporation testified that mistakenly he combined food sale figures from Reggie's Fast Food Outlet with the food sale figures from the Ballpark Restaurant, and together these figures formed the combined food sales of the entire operation. The ratio problems stemmed from the fact that people were ordering food from Reggie's Take-Out and were entering the Ballpark Restaurant to consume it over an alcoholic beverage. This created the food/liquor ratio problem in the licenced establishment. It was maintained that this licensee did not knowingly falsify statements to the Board. The Tribunal accepts this evidence and cannot find anything to the contrary in the evidence presented at this Hearing, which would lead to the assumption of actual knowledge to falsify on the part of the Licence holder sufficient to warrant proceedings being taken under Section 55 (1) (a) of the Liquor Licence Act. In fact although this allegation actually formed the basis of the Board's proposal and ultimate decision, no such proceedings were initiated. Evidence has been given and accepted by the Tribunal that this licensee, due to the nature of the entire operation, actually misinterpreted his obligations under the

Act in combining food receipts from the two adjoining establishments, and honestly believed that there was virtual compliance with the Regulations.

The Liquor Licence Appeal Tribunal therefore hereby revokes the Decision of the Liquor Licence Board dated the 27th day of March, 1980, and directs the Board to review and process the Licence holder's current application for additional Dining Lounge facilities in the above-named establishment.

BANNISTER'S TAVERN, Hamilton

Dining Lounge Licence and Lounge Licence
issued to

Barry Phoenix, Peter McCallion, Terry Butt, Milton
Avruskin and Donald Gardner

APPEAL FROM SUSPENSION ORDER

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE-CHAIRMAN
as CHAIRMAN

BARBARA J. SHAND, Member

KENNETH P. VAN HAMME, Member

COUNSEL: RONALD K. WEBB, Q.C. representing the Licensee
S.A. GRANNUM, representing the Liquor Licence Board

DECISION: JANUARY 23, 1981

BANNISTER'S TAVERN is the Licensee (Licence No. 090121) of the establishment classified as a tavern and known as Bannister's Tavern situate at 93-95 King Street East, Hamilton.

Bannister's Tavern commenced operation in January, 1979, and the Dining Lounge Licence issued is for a room in the basement of the premises, having a seating capacity of 100 persons. The Lounge Licence issued is in respect to two areas, one located on the Main Floor, having a seating capacity of 151 persons, and the other on the Mezzanine, having a capacity of 127 persons.

The principals of the Licensee are:

Messrs. Barry Phoenix, Peter McCallion,
Terry Butt, Milton Avruskin and Donald
Gardner.

All except Milton Avruskin, have varying financial interests in Bannister's Tavern, and Messrs. McCallion and Phoenix are the Managers in charge.

On the 17th day of April, 1980, the Liquor Licence Board issued a Notice of Proposal.

"To suspend for a period of thirty days the liquor licences...

for the following reasons:

The Licensees are in breach of a Term and Condition of their liquor licence because:

(a) Contrary to section 5, subsection 5 of the regulations, they permitted persons apparently under the age of nineteen years to enter upon the premises licensed as a lounge;

(b) Contrary to section 5, subsection 5a, they failed to obtain evidence as to the age of persons apparently under the age of nineteen years prior to serving liquor to such persons; and

(c) Contrary to section 5, subsection 11, they failed to ensure that the premises would be under the supervision and management of persons capable of managing an orderly and efficient operation;

5. On the following dates and times, (9 persons named under the age of 19) were present on the premises licensed as a lounge:

6. Further; on June 27th, 1979, at 1:40 a.m., there were approximately two hundred (200) patrons present on the licensed premises, many of whom were still consuming liquor, notwithstanding that all evidence of the sale and service of liquor was to be removed by 1:30 a.m.;

7. On March 21st, 1980, at 9:00 p.m., there was in the licensed premises a crowd of about three hundred and thirty (330) persons, the men's washroom was strewn with broken beer bottles and patrons were urinating in the sinks and consuming beer in the washrooms."

After a Board Hearing on July 3rd, 1980, to consider its proposal, the Board issued its Decision:

"That the Licensees are in breach of a Term and Condition of their licence in that they have carried on activities that are in contravention of the aforesaid Act and Regulation appurtenant thereto, the particulars of which are set forth in the Proposal

of April 17th, 1980.

The Board therefore Orders that the Lounge Licence only, issued to Messrs. Barry Phoenix, Peter McCallion, Terry Butt, Milton Avruskin and Donald Gardner in respect of Bannister's Tavern, be suspended for a period of fourteen (14) days, commencing at the opening hour on Monday, July 21st, 1980, and to continue until the opening hour on Wednesday, August 6th, 1980."

Evidence was placed before the Tribunal by Police Officers with respect to visits made on the dates recited in the notice of proposal. Testimony was given:

That on June 27, 1979, there was insufficient staff on hand to clear the premises.

That on March 20th, 1980, the management had completely lost any semblance of control. The premises were overcrowded, patrons were urinating in the washroom sinks, people were drinking beer in the washrooms and carrying drinks between floors and in the unlicensed area of the premises. It was a scene of bedlam and an explosive atmosphere, with the band continuing to play and some patrons dancing on chairs. At 12:57 a.m. the band stopped playing and the crowd then started to break bottles and subsequently create havoc.

That on various (stated) dates, persons named under the age of 19 were on the premises.

As to management's lack of concern in properly checking identification of patrons.

An Inspector of the Liquor Licence Board gave evidence as to his many warnings to management, particularly regarding the faultiness of its age-checking procedure.

The solicitor for and one of the principals of this establishment maintained that, although he had a financial interest in Bannister's Tavern, he was not aware of any problems, particularly involving the identification procedure, prior to receiving the Board's Notice of Proposal of April 17th, 1980. He then proceeded to outline what changes had been instituted after the Notice of Proposal to ensure proper management of the operation. These included the hiring of a new experienced manager, the assumption of an active status by two of the principals who had previously been nonactive participants, weekly meetings of the partners and, since August 1980, the retaining of their accountant, as a Receiver-Manager to advise and assist with the operation's financial problems. The solicitor gave his opinion that if the Board's Decision was implemented the business could not handle the financial loss.

The accountant gave evidence in detail regarding the history of the operation since its inception January 1979, and his involvement as its Chartered Accountant and Financial Advisor. In his opinion, since August 1980, all rules and regulations respecting identification procedure have been complied with and any suspension would place the operation in serious financial difficulties.

Based on the evidence submitted, the Tribunal is of the opinion that all the allegations contained in the Board's Notice of Proposal of April 17th, 1980, have been proved as alleged. The question to be determined is what penalty is to be imposed on the Licensees. Counsel for the latter submits that, since the Notice of Proposal, positive steps and stringent controls have been instituted to guard against such incidents as related above, and further submits that, as long as the Licensees are doing all that is reasonable, they should not be subject to the excessively harsh penalty which is being proposed. In the Tribunal's view the onus on management is much more comprehensive than that, and in the case of this establishment the problems relating to the admitting and serving under-age persons, supervising and managing an orderly and efficient operation, should have been solved and in place when the operation commenced business in January 1979.

Pertinent to and illustrative of management's continuing responsibilities, the Tribunal makes reference here to the following extracts contained in its Decision in the case of Mariner's & Sailor's Pub Tavern, Volume 2 of its Summaries of Decisions, Pages 33, 34, 35 and 36:

"The Tribunal accepts the categorizing of The Liquor Licence Act as one of the Statutes enacted for the regulation of individual conduct in the interest of safety and general welfare of the public."

and that

"The particular purpose of The Liquor Licence Act is to regulate the operation of licensed establishments and conduct within them. Specifically, the scope and purpose of Sections... is to restrict in some respect the freedom of choice which otherwise the licensee would have in the sale and supply of liquor and to cast upon the licensee the duty to obey the provisions which would be breached by its own positive acts and to enforce the observance by others of the standard of conduct conforming to the requirements of the Act." R.v. Royal Canadian Legion 21 DLR (3d) 148.

"Present Regulations make as Terms and Conditions - a duty on the Licensee to ensure that in the conduct of the business authorized by the Licence, certain specified acts do not occur. When the act sought to be prohibited is that of a customer, the only way in which the responsibility of the Licensee can be expressed is to impose upon the Licensee the obligation not to permit or suffer the undesirable conduct, in this case, drunkenness."

In the same Decision at Pages 35 and 36 -

"Management should be aware that the consumption of liquor by young people has increased to such a degree that it is causing general concern. The privilege, in this instance special privilege of a Lounge Licence extended to Licensees for the sale of liquor carries with it a very severe responsibility. The adequacy of measures taken to discharge that responsibility should be measured by the exigencies of the particular situation. The enforcement of observance by young people of the standard of conduct set down in respect of the consumption of liquor requires unrelenting vigilance and measures appropriate thereto by the Licensees who find themselves catering to them."

The Tribunal hereby confirms the Decision of the Liquor Licence Board of July 3rd, 1980, suspending the Lounge Licence herein, and directs the Board to set the commencement and termination of the said period of suspension.*

* Note: The above decision was appealed to the Supreme Court of Ontario (Divisional Court). The appeal had not been concluded at the time of this publication.

BARRYMORE'S RESTAURANT

Dining Lounge Licence
issued to
349842 ONTARIO INC.
BARRYMORE'S RESTAURANT
APPEAL FROM ORDER ATTACHING TERM AND CONDITION

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE-CHAIRMAN AS CHAIRMAN
JACK C. SIM
BARBARA J. SHAND, MEMBERS

COUNSEL: S. TIERNEY, Agent for Licensee
S.A. GRANNUM, representing Liquor Licence Board

DECISION: JUNE 16, 1980

349842 Ontario Inc. is the Licensee (Licence No. 021271) of the establishment classified as a restaurant known as Barrymore's Restaurant, 323 Bank Street, Ottawa.

The Licence issued to the Licensee as of September 11, 1978, is in respect of five rooms located at the above address as follows:

1. Second Floor - first and second level - east centre section
2. Second Floor - third level - centre section
3. Second Floor - fourth level - south section
4. Second Floor - fourth level - north section
5. Second Floor - fifth level - centre section

Capacity of the above accommodation is 223 persons.

The history of the operation of the establishment is as follows:

Barrymore's Restaurant is located in the Imperial Theatre, which opened in 1914 and in Ottawa is a heritage land mark. Previous to Barrymore's opening, this building was occupied by a burlesque house, massage parlour and adult magazine store, and was in a very rundown condition. Extensive renovations were made to restore the building to its original elegance and provide the facilities for a restaurant-tavern operation.

The original concept was of a supper club featuring disco music. Apparently this met with a brief success then declined rapidly due to various factors, leaving the business in financial trouble. In addition, the President of the corporation and Operating Manager left the business to become involved in another venture.

In January 1979 the remaining shareholders decided to change the format from disco to live entertainment due to the lack of competition in this area at that date. According to the Licensee business did increase significantly with this change in concept although the business is still carrying debts incurred prior to the September 1978 opening. At this date there is apparently a tentative agreement with the former President and Operating Manager to purchase his shares and open the business to new investors, thus enabling the corporation to satisfy its creditors. It was maintained that this new backing would also permit the establishment to provide feature entertainment on a more regular basis as opposed to rock n' roll acts exclusively. The purpose of management appears to be to restore Barrymore's to its supper club atmosphere and feature entertainment appears to have attracted the maximum dining reservations.

After a Hearing of the Liquor Licence Board which commenced on July 31st, 1979, and continued on November 8th, 1979, to consider its proposal to attach a "Term and Condition" to the Dining Lounge Licence in respect of the establishment for the reason that the total receipts from the sale of liquor in these premises have exceeded the total receipts from the sale of food, contrary to Section 6, subsection (5)(a) of Regulation 1008/75 under The Liquor Licence Act, 1975, the Liquor Licence Board found that the aforesaid contravention exists and issued the following Order:

"Commencing Monday, November 26th, the "Term and Condition" is that the sale and service of alcoholic beverages in the 'Dining Lounge' of Barrymore's Restaurant shall cease at 10:00 p.m. daily until such time as the requirements of Section 6, subsection (5)(a) of Regulation 1008/75 are satisfied."

At the Board and Tribunal Hearings, Inspector S. J. Napolitano, an investigator with the Liquor Licence Board, gave evidence that, on instructions from the Board, he monitored the premises with respect to their food/liquor ratio on September 27th, 28th and 29th, 1979, and the ratio was not met

His check of the premises showed it to be an old theatre with tables set up on different levels and a stand-up bar located

at the back, and one at the front. The premises, including washrooms and kitchen were found to be clean and the 'fridges' contained ample, and a good variety, of food. The operation was adequately staffed with a cook, dishwasher and food waitresses. Approximately 25 tables were set for dining and a buffet is set up with at least 2 hot dishes and a variety of salads. He indicated that there were very few diners at lunch or at the dinner hour.

For the days of Thursday, Friday and Saturday, entertainment is provided by a punk rock group which starts to perform at approximately 9:30 p.m. and attracts only the younger crowd between the ages of 19 and 30. Because of the late start very few take advantage of the buffet which is moderately priced. An admission charge is collected at the door for the entertainment and if dinner is taken there is no admission charge.

Inspector F.L. Hooper of the Liquor Licence Board gave evidence and indicated that since October 1st, 1979, he had inspected Barrymore's twice a week at various hours of the day and night, that food was available at all times and that the establishment was usually filled to capacity in the evening. Under cross-examination he indicated that in his opinion Barrymore's had tried various solutions to solve the problem of the food/liquor ratio and in the past month (April 1980) the ratio had shown marked improvement. In his opinion top-notch entertainment which the establishment is engaging would seem to solve to a certain extent the problem of lack of use of the dining-room facilities, particularly since patrons are encouraged to telephone ahead for dinner reservations.

On behalf of the Licensee evidence was given that, despite all efforts to increase the sale of food, the 50-50 ratio of alcohol to food sales was almost impossible to meet. The Licensee filed a summary of gross receipts for the period September 1978 to April 1980, indicating a monthly range of 22% to 56% food sales and 48% to 78% liquor sales. Evidence was also given as to the Licensee's efforts to comply with the regulation, including extensive and costly renovations to the entire kitchen facilities, the employment of food waitress, variations and extensions to the menus and, at the suggestion of the Board, a change in the offering of entertainment from the previous punk rock variety to top-line entertainment to attract a better and older clientele.

As of March 24th, 1980, the Licensees submitted to the Board an Application for an Entertainment Lounge Licence which, in accordance with Section 6(6) of the Regulations, would permit a 30% to 70% ratio of food to liquor, if granted.

Carl N. Thomson, father of and advisor to the active shareholder in the business, Sherry Gail Rhodes, testified as to his

previous extensive experience in the entertainment field and his desire to invest in the establishment and attract other such investors. He maintained that the Licensee's problems were those of previous mismanagement and the fact that initially the Licensee should have applied to the Board for an Entertainment Lounge Licence rather than the one originally granted.

In his summation, Counsel for the Board, with reference to compliance with the Term and Condition of the Dining Lounge Licence as set out in Section 6 (5) of the Regulations, cited for the Tribunal's consideration the criteria or guidelines referred to in Regina v. City of Sault Ste. Marie, 85 D.L.R. 3rd Edition, 1978, at Page 185, a Decision of the Supreme Court of Canada, which guidelines were established in the case of Bordeaux Restaurant, Volume 3 of The Summaries of Decisions of the Tribunal at Page 41.

I. Relating these guidelines to the operation of Barrymore's Restaurant, Counsel for the Board agreed that all technical facilities for a bona fide restaurant (food) operation were satisfied.

II. As to reasonable efforts being made by the Licensee to meet the requirements of the Regulation, Counsel for the Board outlined the sequence of events, commencing in September 1978, including the Board's warning at that time, a Notice of Proposal in May 1979, the Board Hearing in July 1979, which was reserved until November 1979, to permit a further monitoring of the operation. Counsel argued that the Licensee had been granted sufficient time to improve the food/liquor ratio and had made no real effort to do so.

On this guideline the Tribunal is cognizant of the facts in the Bordeaux Restaurant case, where absentee ownership, lack of continuous proprietor supervision, the leaving of management to a waitress, resort to a male striptease, and the emphasis of the establishment's advertising on entertainment rather than a restaurant operation, were strong indications that the Bordeaux Restaurant was strictly a place of entertainment and for the consumption of liquor. On the other hand, based on the evidence submitted, with respect to Barrymore's Restaurant, the Tribunal is of the view that reasonable efforts have been and are being made to meet the requirements of the Regulation, including the restoration of the building, the extensive renovations and upgrading of the kitchen facilities and its service, including the hiring of food waitresses, and management's change of policy with regard to entertainment.

III. The Tribunal is further of the opinion, with respect to the reasonable success of meeting the requirements in a reasonable

period of time, the evidence given by the present Board investigator, Inspector F.L. Hooper, is accepted as indicating that the food/liquor ratio has improved considerably with the change in the type of entertainment, and encouragement provided by management in the various ways outlined herein to create a popular dining-entertainment operation.

Accordingly, the Liquor Licence Appeal Tribunal, pursuant to Section 15 (3) of The Liquor Licence Act, and after hearing and considering at length all oral and documentary evidence and submissions presented by Counsel for the Liquor Licence Board and Counsel and Agent for the Licensee, has determined that, under the present Dining Lounge Licence held by the Licensee it is impossible for said Licensee to comply with the food/liquor ratio stipulated in Section 6 (5) of Regulations 1008/75 of the Liquor Licence Act, 1975, and, in view of the fact that the Licensee, as of the 24th day of March, 1980, has applied to the Liquor Licence Board for an Entertainment Lounge Licence to replace its present licence, the Liquor Licence Appeal Tribunal hereby directs the Board to take such action forthwith, by way of alteration, revocation, or otherwise, to replace the present licence with an Entertainment Lounge Licence, provided that, in the opinion of the Board, the Licensee complies with all stipulations, conditions and requirements for the granting of such an Entertainment Lounge Licence.

BORDEAUX RESTAURANT, Scarborough

Dining Lounge Licence
issued to
Bordeaux Restaurant Limited
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM, MEMBER
BARBARA J. SHAND, MEMBER

COUNSEL: S.A. GRANNUM representing the Liquor
Licence Board
MICHAEL J. MITCHELL representing the Licensee

DECISION: May 7, 1980

On the 8th day of February, 1980 the Board issued a Notice of Proposal pursuant to the Liquor Licence Act, S.O. 1975, c. 40 section 11(3), to SUSPEND for a period of thirty (30) days the liquor licence(s) held by the above establishment for the following reasons:

.....

"6. On Sunday, July 15th, 1979 at about 2:45 p.m. there were present on the licensed premises approximately 55 persons consuming liquor and one of the officers of the licence holder, Mike Starkovski, was dispensing liquor to the patrons.

7. On the said date and said time it was admitted to police officers investigating that several of the persons in attendance had brought with them their own beer and one of the officers of the licence holder, Mr. Kocovski, also admitted that some of the beer also came from his other tavern known as Monsier Coco.

8. As a result of the said incident, Cvetko Kocovski, President and Mike Starkovski, Secretary of the licensee corporation, were convicted in Provincial Court at Scarborough on the 2nd of October,

1979 of permitting liquor other than that purchased by the licence holder to be brought upon the licensed premises.

9. On Friday, November 16, 1979, an employee of the licence holder, namely Karen Doherty, sold and served liquor to two persons who were apparently under the age of 19 years, namely Glen Smith and Bradley Skiffington.

10. The licence holder is in breach of terms and conditions of its licence in that, contrary to section 5(5a) of the Regulations under the Act, it failed to ensure that evidence as to the age of persons was obtained prior to serving liquor to persons apparently under the age of 19 years; and contrary to section 5(20), it failed to notify the Board forthwith of any changes in the hours of operation of the licensed premises..."

After a 'hearing' on Tuesday, March 18th, 1980, to consider its 'Proposal' to SUSPEND for a period of thirty (30) days the liquor licence issued in respect of the Bordeaux Restaurant, the Board found "that the licensee is in breach of a term and condition of its licence in that it has carried on activities that are in contravention of the aforesaid Act and Regulations appurtenant thereto, the particulars of which are set forth in the 'Notice of Proposal' dated February 8th, 1980" and ordered "that the 'Dining Lounge' licence issued to Bordeaux Restaurant Limited, in respect of the Bordeaux Restaurant be "SUSPENDED" effective at the opening hour on MONDAY, APRIL 7th, 1980, and to continue until the opening hour on MONDAY, APRIL 28, 1980."

The Licensee requested a hearing by the Tribunal.

At the conclusion of the hearing, the Chairman gave an oral decision on behalf of the Tribunal:

The Tribunal finds that on Sunday, July 15, 1979, the Licensee operated the premises. The hours of operation as filed with the Board indicated that the premises are closed on Sunday. The Tribunal finds that the conversation between a director of the Licensee and the Liquor Licence Inspector does not constitute notification of the change. Accordingly, the

Tribunal finds that the Licensee was in breach of Regulation 5, subsection 20, and the Tribunal finds that such breach occurred in the face of direction by the Liquor Licence Inspector to a director of the Licensee as to the procedure to be followed.

The Tribunal finds that on Sunday, July 15, 1979, directors of the Licensee permitted liquor other than that purchased by the licence holder to be brought upon a licensed premises. The Tribunal notes the conviction of Cvetko Kocovski and Mike Starkovski in respect of this breach. Accordingly, the Tribunal finds that the directors of the Licensee were in breach of Regulation Section 6 (10), namely no liquor other than that sold by the license holder under the authority of the licence shall be brought upon a licensed premises and the licence holder shall not knowingly permit other liquor to be brought upon the licensed premises.

The Tribunal finds that on Friday, November 16, 1979, the Licensee supplied liquor to two persons who were apparently under the age of 19 years. The Tribunal notes the conviction of the Licensee in respect of such breach. Accordingly the Tribunal finds the Licensee was in breach of section 45 (2) of the Act.

The Tribunal finds that on Sunday, July 15, 1979, as testified to by Constable Martin whose testimony is set out on page 8 of the Secretary's Minutes, that the licence holder failed to ensure that evidence as to the age of persons was obtained prior to serving liquor to persons apparently under the age of 19 years, and accordingly the Tribunal finds that the Licensee was in breach of Regulation Section 5 (5a).

Counsel for the Licensee has taken the position that the Board set out in the Minutes of its meeting the terms of the Notice of Proposal to be considered by it, as set out on page 3 of the Minutes, and that accordingly the Tribunal is restricted in the matters to which it may give attention. The Tribunal has stated the nature of its hearing to be a hearing de novo although the title of the tribunal is Liquor Licence Appeal Tribunal. The Tribunal has held that it is not just a review of the Board's procedures and decision which is to be undertaken by the Tribunal but that in accordance with section 15(3) its power is to hold a hearing. Accordingly the Tribunal can hear the evidence which can be properly placed before it, and can come to conclusions based on that evidence. Under

section 11(3) of the Act, the power of the Board to, among other things, suspend a licence can be based on any reason that would disentitle the licensee to a licence under section 6 if he were an applicant, or where the Licensee is in breach of a term or condition of the licence. The format of the Notice of Proposal and the statement by the Board at its hearing does not prevent the Tribunal from arriving at such conclusions as the evidence before it would indicate. The Tribunal notes that all the evidence placed before the Tribunal hearing was before the Board, and that reference to the Notice of Proposal was made in the Decision of the Board. The evidence before the Board related to all of the items set out in the Notice of Proposal and the Tribunal is of the opinion that the Licensee was not prejudiced by the format and procedure followed by the Board. Section 6(1) (c) in respect of entitlement to a licence is the exception where the applicant is a corporation and the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty. The Tribunal is of the opinion that the breaches of Regulation Section 6(10) and Section 45(2) of the Act, are past conduct upon which the opinion may be based that there would be a disentitlement of a licence upon application, and accordingly there is power under section 11(3) to suspend. The Tribunal is of the opinion that the breaches referred to of Regulation 5(20) and Regulation 5(5a) are also past conduct which afford reasonable grounds for belief that its business will not be carried on in accordance with law and integrity and honesty.

The Tribunal finds that sections 5(20) and 5(5a) are conditions of the licence and breaches thereof can be the basis of action under section 11(3). It was very clearly and ably argued by Counsel that these two subsections are not terms and conditions of the licence. Reference was made to the provisions of the Interpretation Act and cases in support of these arguments with particular emphasis and reference to specific sections in the Regulations where the words "it is a term and condition of a licence" are set out in specific manner. The Tribunal is of the opinion that the items 5(20) and 5(5a) are to be interpreted as terms and conditions of the licence.

As to the length of the suspension, the Tribunal is of the opinion that it should not interfere with the decision of the Board which is charged with the administrative responsibility of regulating this licensed industry, unless there is some reason which calls for an alteration. The Tribunal notes

that in this matter there are a number of unrelated breaches which the Tribunal accepts as being major and notes that there was a reduction of the proposed suspension of the Board.

Pursuant to section 15, subsection 3, the Tribunal confirms the decision of the Board and directs the Board to set the terms of suspension.*

* Note: The above decision was appealed to the Supreme Court of Ontario (Divisional Court). The appeal was dismissed.

CENTRAL HOTEL

Dining Lounge Licence
issued to
JAMES BERNDT and PATRICIA BERNDT
APPEAL FROM ORDER OF SUSPENSION

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE-CHAIRMAN as CHAIRMAN
JACK C. SIM and
BARBARA SHAND, Members

COUNSEL: D.O'DONNELL, representing the Licensees,
S.A. GRANNUM, representing the Liquor Licence Board

DECISION: JUNE 23, 1980

James Berndt and Patricia Berndt are the Licensees (Licence Number 010410) of the establishment classified and known as Central Hotel, Moose Creek, Ontario.

The Licensees are the holders of a Dining Lounge Licence covering the north-west section of the main floor containing a Dining Lounge having a seating capacity of 24 persons and of a Lounge Licence covering the east section of the main floor having a seating capacity of 84 persons.

By Notice of Proposal dated December 11, 1979, the Liquor Licence Board gave notice to the Licensees of its intention to suspend for a period of twenty-one (21) days the liquor licences issued in respect of these premises for the following reasons:

During the month of September, 1979, the licence holders employed one, Brenda Lee Wilson, to perform as an exotic dancer in the licensed premises, and as a result of the performance of the said Brenda Lee Wilson, on Wednesday, September 19th, 1979, in the licensed premises, the said Brenda Lee Wilson was charged and convicted in Provincial Court of being nude in a public place, contrary to Section 170 (1) (a) of The Criminal Code of Canada. The licence holders are in breach of a Term and Condition of their Licence in that, contrary to Section 5(4) of the Regulations under the Liquor Licence Act, the licence holders permitted disorderly conduct to take place in the licensed premises, namely by permitting the said Brenda Lee Wilson to appear nude in the licensed premises. The licence holders failed

to take all reasonable steps that a reasonable and prudent person would take to ensure that they did not contravene the provisions of The Criminal Code.

.At the request of the Licensees a Hearing of the Liquor Licence Board was held on February 11th, 1980, and the following Decision was rendered:

"The Board therefore, orders that the 'Lounge' Licence issued to James and Patricia Berndt, in respect of the Central Hotel, be "SUSPENDED" effective at the opening hour on Monday, March 3rd, 1980, and to continue until the opening hour on Monday, March 17th, 1980."

.At the Tribunal Hearing there was filed as an Exhibit a copy of a Certificate of Conviction in the Provincial Court indicating that on October 30th, 1979, the said Brenda Lee Wilson was found guilty of being nude in a public place on September 19th, 1979, being the Red Door Lounge of the Central Hotel, Moose Creek, Ontario, contrary to Section 170(1) (a) of The Criminal Code, and was sentenced to a fine of \$100.00, or five days in jail for the said offence.

Counsel for the Board outlined the issues before the Tribunal as follows:

1. Does the commission of the offence referred to in the Certificate of Conviction amount to 'disorderly conduct' within the meaning of Section 5(4) of the Regulations under the Liquor Licence Act.
2. If being nude in a public place amounts to 'disorderly conduct' within the meaning of the Regulations, did the licence holders 'permit' the disorderly conduct to take place in the licensed premises.

Detailed evidence was given by Inspector Roger Forgues of the Liquor Licence Board, and Constable J.G. Tremblay of the Ontario Provincial Police as to the general operation of the licensed premises by the Licensees and the circumstances culminating in the charge laid and the conviction obtained.

Counsel for the Licensees submitted the evidence of a number of patrons and employees of the Central Hotel, indicating in general their satisfaction with the manner in which the licensed establishment is run, and that this is the first complaint of any

kind lodged against the Licensees or their operation since they assumed ownership in 1977.

The licence holders themselves gave evidence in detail as to the care given by them in instructing all dancers they employ, including the said Brenda Lee Wilson, to abide by their rules and to keep, in particular, an article of clothing on at all times. On the evening in question, namely Wednesday, September 19th, 1979, James and Patricia Berndt were away, and had delegated to their full-time employee and bartender, Wayne McDermid, responsibility for the general supervision of the Lounge. Following the routine established, the employee repeated the employers' instructions to the dancer, Brenda Lee Wilson, and when the incident happened was very busy supervising and tending the bar.

In summation, Counsel for the Board argued that, being found nude in licensed premises amounted to 'disorderly conduct' within the context of Section 5(4) of the Regulations. On this basis Counsel maintained that the licence holders delegated their ultimate responsibility of management to the said employee who was far too busy at the time to serve liquor as a barman in addition to overseeing the actions of the dancer. Thus, in effect, they 'permitted' the incident to happen.

On the other hand, Counsel for the Licensees cited in reply for the Tribunal's consideration a number of decisions of various Courts outlining the proposition that nudity per se is not sufficient to amount to disorderly conduct and that it must in some manner offend against public decency and order.

Reference was made to Volume II of Butterworth's Words & Phrases Legally Defined at Pages 84 and 85 where 'disorderly conduct' must have as an ingredient the fact that it causes annoyance to others. In the Tribunal's opinion one quotation sums up the meaning a Court should give to 'disorderly conduct'-

" --- an offence against good manners, a failure of good taste, a breach of morality, even though these may be contrary to the general order of public opinion, is not enough to establish this offence. There must be conduct which not only can fairly be characterized as disorderly, but also is likely to cause a disturbance or to annoy others considerably ---"

The Tribunal therefore is of the opinion, based on the evidence presented, that nudity as such does not constitute disorderly conduct within the meaning of Section 5(4) of the Regulations and that the licence holders under the circumstances

took all reasonable and prudent steps to guard against such an incident occurring.

The Liquor Licence Appeal Tribunal revokes the Board's Order of Suspension of February 11th, 1980, with respect to the Lounge Licence Number 010410.

CHATSWORTH HOTEL, Chatsworth

Public House Licence
issued to
Chatsworth Hotel Limited
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN W. ERICKSON, Q.C., VICE-CHAIRMAN, and
BARBARA J. SHAND, MEMBER

COUNSEL: S.A. GRANNUM representing the Liquor Licence
Board

AGENT: M.A. MUNDIER representing the Licensee.

DECISION: January 22, 1980

Chatsworth Hotel Limited is the Licensee (Number 010216) since November, 1976 of premises classified as a Hotel and known as Chatsworth Hotel, Garafraxi Street, Chatsworth. The officers and shareholders of the corporation are:

Mark A. Mundier, President
Wilma Mundier, Treasurer.

The licences issued are as follows:

Dining Lounge Licence Serial #DL 3436 in respect of one room located

Main Floor, North and South Centre Section
capacity 95 persons,

Public House Licence Serial #10944 in respect of
5 rooms located:

1. Main Floor: Northwest Section, capacity 44
2. Main Floor: Southwest Section, capacity 30
3. Basement: Northwest Section
4. Basement: Centre Section
5. Basement: Northeast Section

Rooms #3, #4, and #5 are not utilized.

On the 19th day of September, 1979, the Liquor Licence Board issued a Notice of Proposal to suspend for 30 days

the liquor licences herein for the following reason:

"4. The Licence holder is carrying on activities contrary to regulations under the Liquor Licence Act in that on Wednesday, August 22, 1979 spirits were sold to patrons of that part of the premises licenced as a Public House notwithstanding that a Public House licence entitles the holder thereof to serve beer only in the said Public House premises."

After a Hearing on the 6th day of November, 1979 the Board found:

"that the Licensee is in breach of a term and condition of its licence in that it has carried on activities that are in contravention of the aforesaid Act and Regulations appurtenant thereto, the particulars of which are set forth in the 'Notice of Proposal' dated September 19, 1979"

and ordered

"that the 'PUBLIC HOUSE' Licence issued to the Chatsworth Hotel Limited in respect of the Chatsworth Hotel be "SUSPENDED" effective at the opening hour on Friday, November 23rd, 1979 and to continue until the opening hour on Monday, December 17, 1979".

Section 2 of Regulation 1008/75 under the Act which prescribes the classes of licences under the Act for the purposes indicated, sets out in Paragraph (v)

"public house licence, for the sale and service of beer".

The Tribunal finds that on Wednesday, August 22, 1979, Constable Wayne Frechette, as a patron of that part of the premises of the establishment licensed as a public house, was therein twice sold and served spirits, namely, a mixed drink of light rum and 7-up, and that 4 other patrons of the public house were sold and served mixed drinks containing spirits. The spirits were obtained from the bar utilized in conjunction with the Dining Lounge of the establishment. The sale and service was made by a bartender who had been in the employ of the establishment for some 25 years. The Tribunal finds that the management of the establishment on this occasion had been delegated to the said bartender and that the licensee

is responsible for his actions.

No evidence was introduced in contradiction of the said findings.

The Tribunal notes that the licensee had formally applied two years ago for a conversion of the Public House to Lounge Licence which would have permitted the sale of spirits, and that the application had been approved subject to the usual technical conditions, but that the licensee had not brought the matter to a conclusion because of the costs involved.

The bartender had in effect done what necessitated a licence, the procuring of which had not been proceeded with by the licensee.

The Liquor Licence Board is charged with the administration of the Act and with the regulations of the licences thereunder.

In the present instance the Board reduced the proposed penalty of 30 days to 3 weeks, and restricted the suspension to the Public House licence, so that it is clear that the Board directed its attention to the extent of the penalty.

The Licensee appealed the decision because of the "severity of the penalty" and "because of its effect on the financial position of the hotel". It was contended that "in view of the first offence of any kind, in all fairness a reprimand and warning would be in order".

The Tribunal notes that the establishment has been satisfactorily operated and that this is the first offence. These are matters which were within the knowledge of the Board at the time it imposed the penalty. The Tribunal is of the opinion that it should not interfere with penalties imposed by the Board except for good reason. Though the Tribunal is of the opinion that the penalty can be regarded as being severe under the circumstances, the Tribunal finds no reason upon which an alteration of the decision can be based.

The Tribunal accordingly finds that this licensee has been in breach of the Regulation as set out herein, and hereby confirms the decision of the Liquor Licence Board and directs the Board to set the commencement and termination of

the suspension period.

The decision was delivered orally at the conclusion of the hearing by the Chairman.

ELAINE'S INNS INCORPORATED

Dining Lounge Licence
issued to
Elaine's Inns Incorporated
APPEAL FROM ORDER ATTACHING TERM AND CONDITION

TRIBUNAL: GORDON I. PURVIS, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, Members

COUNSEL: PETER CAMERON of The Clarkson Company Limited,
Interim Receiver of the Licensee
S.A. GRANNUM representing the Liquor Licence Board

DECISION: JUNE 10, 1980

Elaine's Inns Incorporated is the Licensee and the Lessee of premises classified as a dining lounge known as Elaine's Restaurant, 1075 Bank Street, Ottawa, Ontario.

The Licence issued is a:

Dining Lounge Licence,
Serial Number 020990
in respect of the main floor of a 1-storey
building having a capacity of 205 persons,
and the Licensee received its Licence in
March, 1978.

On September 12, 1979, the Liquor Licence Board issued a Notice of Proposal to attach a Term and Condition to the Dining Lounge Licence of the above-named establishment that,

"the sale and service of liquor in the
establishment shall cease at 10:00 p.m.
for the following reasons:

The Licensee is carrying on activities
that are in contravention of Section 6,
subsection (5) of Regulation 1008/75 under
the Liquor Licence Act, 1975, in that the
total receipts from the sale of liquor have
exceeded the total receipts from the sale
of food in the months of March 1978 to October
1978, March and April 1979 and June and July
1979 as set out in the said Notice of Proposal.

On December 13, 1979, the Board initiated a Hearing in the matter and rendered the following decision:

"Commencing Wednesday, January 2, 1980, the Term and Condition is that the sale of alcoholic beverages in the Dining Lounge of Elaine's Restaurant shall cease at 10:00 p.m. daily until such time as the food and liquor sales are to the satisfaction of the Board in conformity with Section 6, Subsection (5)(a) of Regulation 1008/75 under the Liquor Licence Act, 1975."

At the Tribunal Hearing Counsel for the Licensee submitted the following information:

As of May 5, 1980, the premises had been closed due to the bankruptcy of the Licensee, and by an Order of The Supreme Court of Ontario in Bankruptcy, issued May 9, 1980, the Clarkson Company Limited was appointed Interim Receiver of the property of Elaine's Inns Incorporated and directed to take immediate possession of same, control receipts and disbursements, and carry on the business if necessary due to the abandonment by present management, until such time as the said Interim Receiver has been appointed Trustee in Bankruptcy. In his opinion, to protect creditors of the Licensee, the business has to be sold as a going concern, and any prospective purchaser would be discouraged from purchasing same if the Board's proposed Term and Condition were not lifted. He submitted information that the proposed Trustee in Bankruptcy would immediately refurnish and reopen the restaurant, including appointing new management, and would particularly adhere to the food/liquor ratio. The agent for the owner of the premises and of the adjoining property indicated that said owner would co-operate fully in the Trustee's efforts to sell the restaurant and assets as a going concern.

The Tribunal received a submission from Counsel for the Board agreeing in principle to the above proposal and citing the Board's authority under Section 4, Subsection (5) of the Liquor Licence Act, 1975, as to the temporary transfer of the licence.

The Tribunal is of the opinion that the Board had the authority under Section 10 (1) to attach the Term and Condition set out in its decision of December 13, 1979, had properly exercised that authority, but in view of the above circumstances renders the following decision:

The Liquor Licence Appeal Tribunal, pursuant to Section 15 (3) of the Liquor Licence Act, HEREBY REVOKES THE DECISION of the Liquor Licence Board, dated the 13th day of December, 1979, and directs the Board to consider an Application

for a transfer of the present licence to a Trustee in Bankruptcy of Elaine's Inns Incorporated, the Licensee, when the Board has been advised and is satisfied that such a Trustee in Bankruptcy has been appointed.

ESTAMINET INVESTMENTS LIMITED, Burlington

Dining Lounge Licence
issued to
Estaminet Investments Limited
APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: J. W. ERICKSON, Q.C., VICE-CHAIRMAN AS CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: PAUL R. HENRY representing Licensee
S.A. GRANNUM representing the Liquor Licence Board

DECISION: JANUARY 15, 1980

Estaminet Investments Limited is the owner of Estaminet Tavern and the Licensee herein, being the holder of Licence No. 090005 for premises located at 2084 Lakeshore Road, Burlington Ontario.

On the 8th day of August, 1979 The Liquor Licence Board of Ontario issued a Notice of Proposal under Section 12 of The Act wherein it proposed to attach a term and condition to the Dining Lounge Licence of the Estaminet Tavern and in particular to a portion of the premises located on the second floor of the establishment wherein a business was being carried on under the style and firm name of Kelly's At The Tree Top for the following reasons:

- "1. The licence holder is a corporation and is the holder of a Dining Lounge and Public House licence No. 090005.
2. The officers of the corporation are: John C. Best, President and Carol J. Best, Secretary.
3. The licence holder operates the licensed premises on the main floor, which premises are licensed as a dining lounge.
4. In 1977, the licence holder entered into an agreement with Shelsi Holdings Limited to manage the licensed premises on the second floor of the establishment and known as "Kelly's Tree Top" and consisting of part of the dining lounge and the public house premises.

5. The premises known as "Kelly's Tree Top" has its own identification sign and a separate entrance. It is operated as a disco and the dining lounge area has a capacity of 173 persons.
6. Commencing in March, 1979, the licence holder has rented out each Sunday the south east dining lounge for an antique auction.
7. Kelly's Tree Top is closed Monday. On Tuesday to Thursday and on Saturday, the hours of operation are 7:30 p.m. to 1:00 a.m., on Friday from 2:30 p.m. to 1:00 a.m. and on Sunday from 6:00 p.m. to 10:00 p.m.
8. The records for the receipts from the sale of liquor in Kelly's Tree Top are maintained in London, Ontario by the manager and are provided to the licence holder who has no control over the sales of liquor in the Tree Top and does not maintain its own records therefor.
9. Advertisements for Kelly's are placed in the local newspaper, the Burlington Gazette, describing Kelly's as fully licensed, although no liquor licence has been issued to Kelly's. The said advertisements make reference to a new wine bar. Free liquor is offered to any lady attending the premises between 7:30 p.m. and 9:00 p.m. on Thursday night.
10. The gross receipts from the sale of food and liquor in the licensed premises for May and June, 1979 are as follows:

	<u>Month</u>	<u>Liquor</u>	<u>Food</u>
Estaminet	May, 1979	\$8,410.96	\$26,394.30
Kelly's	May, 1979	<u>8,591.64</u>	<u>1,513.70</u>
	Total	\$17,002.60	\$27,908.00
Estaminet	June, 1979	9,553.00	31,469.00
Kelly's	June, 1979	<u>6,571.44</u>	<u>854.75</u>
	Total	<u>\$16,124.44</u>	<u>\$32,323.75</u>

11. The licence holder is carrying on activities that are contrary to the regulations as follows:

(a) Contrary to section 5, subsections (31) and (31a) of Regulation 1008/75 as amended by 590/78, the licence holder does not keep books and records that fully and clearly set forth the sales of food and liquor in Kelly's.

(b) Contrary to section 20(4) of Regulation 1008/75 as amended by 165/79, the licence holder offers patrons free liquor in Kelly's and has permitted unlawful advertising.

(c) Contrary to the decision of the Board dated May 3rd, 1979, the sales of liquor in Kelly's have exceeded the sales of food therein in that part licensed as a dining lounge."

The Board held a hearing on September 25th, 1979 and ordered that:

"commencing on MONDAY, DECEMBER 3rd, 1979, the "TERM and CONDITION" is that the sale of alcoholic beverages in that part of the licensed premises located on the Second Floor of the establishment and known as "Kelly's" shall CEASE at 10:00 p.m. daily, for the reasons set forth in the aforementioned "Proposal".

Further, the Board will review on or about that date, namely December 3rd next, the status of the proposed transfer of these licensed premises to a purchaser acceptable to the Board.

Finally, the Board understands that Shelsi Holdings Limited will divest itself of any interest in the operation of that part of the licensed premises known as "Kelly's" as of December 31st, 1979."

The Licensee appealed the decision of the Board to this Tribunal and a hearing was held in the City of Toronto on December 18th, 1979. The evidence called indicates that the building in question has been in the same location for approximately six and one-half years and was purchased by the present owners in the year 1973. Apparently the building originally consisted of one floor which was built some time prior to 1919 and the second floor or newer part was constructed in 1969. Pursuant to the terms of the Dining Lounge Licence there are approximately four different dining rooms, three being located on the first floor, one being located on the

second floor, the second floor dining area hereinafter referred to as Dining Room No. 5. Mr. Best the President of Estaminet Investments Limited indicated that since the year 1973 when he purchased control of the premises he did have entertainment on the second floor which consisted of bands, disco and then back to a form of rock and roll. The evidence further indicates that in August of 1977 Estaminet Investments Limited entered into a Management Agreement with James Daniel Kelly, Richard Hugh Frazer and Barry Edwin Gold which purported to allow those named individuals to manage the second floor portion of the licensed premises. The three individuals apparently agreed to make and have made an investment of approximately \$43,000.00 in renovations to Dining Lounge area No. 5 and approximately \$100,000.00 was expended on a sound system, lighting, air conditioning and other equipment. In March of 1978, Kelly, Frazer and Gold assigned their interest in the Management Agreement to Shelsi Holdings Limited which entered into a Management Agreement with the Licensee. There was evidence given that Shelsi Holdings Limited as part of its management function prepares a weekly financial statement which is presented to Mr. Best for consolidation with the financial returns from the balance of the licensed premises. Shelsi Holdings Limited employed a bookkeeper in London, Ontario but the financial consolidation at the Estaminet Tavern is prepared by Mr. Best at the licensed premises in Burlington. There is also a daily record kept at Burlington with respect to Dining Lounge No. 5 and daily and weekly records are available for the inspection of the employees of The Liquor Licence Board.

At the hearing, four Agreements were filed as evidence with the Tribunal bearing dates September 1st, 1977, March 8th, 1978, March 20th, 1978 and September 13th, 1978. It is apparent that the most important document for the purposes of these proceedings is the Agreement dated September 1st, 1977 since the subsequent Agreements merely amend certain portions dealing with revenue sharing and were entered into in an apparent attempt to comply with the provisions of The Liquor Licence Act.

It is agreed by the parties that Dining Lounge No. 5 on the second floor failed to meet the 50/50 ratio with respect to the sale of food and liquor. Other issues before the Board at its hearing related to improper advertising and the failure to maintain proper records. Counsel agreed at the outset of the hearing before the Tribunal that the issues with respect to advertising and records had been satisfactorily resolved and that the issue before the Tribunal was the question of compliance with Section 6(5) of the Regulation.

Counsel for the Licensee in his argument indicated that it was the Licensee's opinion that Section 6(5) requires the ratio of food and liquor to be maintained for all of the licensed premises not parts of the licensed premises to be looked at on an individual basis. It is conceded by the parties that the main floor of the establishment complies with Section 6(5) of the Regulation and that if the second floor, that is Dining Lounge No. 5, is looked at on a consolidated basis with the main floor then there is compliance with Section 6(5) of the Regulation in that the gross receipts from the sale of liquor in the establishment as a whole do not exceed the gross receipts from the sale of food.

The Act also contains a definition of "licensed premises" in Section 1(h) of the said Regulations.

Mr. Grannum conceded that the Board does not require separate records for each part or portion of the licensed premises covered by one Dining Lounge licence, especially where the premises are divided into a number of separate rooms. The Tribunal is of the view that the Act does not require separate records. The Tribunal finds the provisions of the Act are complied with if the total gross receipts from the sale of food and liquor sold in all parts of the premises comply with Section 6(5) of the Regulations. It is the Tribunal's opinion that to find otherwise would lead to a result which is not supported by the language of the Act and Regulations.

During the hearing the Tribunal directed the attention of Counsel for the Licensee and the Board to the arrangement between Shelsi Holdings Limited and Estaminet Investments Limited and more particularly to the provisions of Section 5(9) of the Regulations to the Liquor Licence Act. In so doing the Tribunal questioned the arrangement which had been entered into between the Licensee and Shelsi Holdings and the validity of the same as it relates to the Liquor Licence Act and the Regulations.

John Cameron Best, the President of Estaminet Tavern, gave evidence and testified that he had intended at all times to maintain the control and supervision over Kelly's At the Tree Top which is Dining Lounge No. 5 and that the arrangement was simply a management agreement which in his view was permitted by the Act and the Regulations. A review of the evidence led with respect to the arrangement between Estaminet and Shelsi indicates the following:

1. Shelsi did their own banking;

2. Shelsi did their own accounting. In fact this led to difficulties with the Board since records were kept in London;
3. Shelsi did their own hiring and firing and apparently Mr. Best had no control over the staff or personnel that were used on the premises;
4. Shelsi retained and paid their own live entertainment;
5. Shelsi told Mr. Best what liquor was required so that he could purchase it under the authority of the Licence;
6. The Agreement of September 1st, 1977 and particularly paragraph 1(a) says as follows:

"1(a). The management firm will, subject to 1(b) below, manage, run and otherwise control in a reasonable manner, all aspects of the operation now being, and which in the future will be, carried on in the upstairs premises for a period of three (3) years, commencing on the first day of September, 1977 and ending on the 31st day of August, 1980.";
7. Nowhere does the Agreement of September 1st, 1977 or for that matter any of the Agreements reserve the overall supervision to Estaminet Investments Limited or to Mr. Best;
8. The Agreement clearly sets out a term of at least 3 years so long as Shelsi complies with the terms of the Agreement which would indicate that this was not an arrangement at will which could be terminated even if Estaminet Investments Limited wanted to unless there was a substantial breach of the Agreement's terms;
9. The words in the Agreement talk of "a licensed drinking establishment";
10. It is clear that the Shelsi group was not in business to compete with the Estaminet Investments Limited with respect to the sale of food and in fact the vast majority if not all of the food was sold from the kitchens of Estaminet since Dining Lounge No. 5 had no separate facilities.

Section 5, Subsection 9 of the Regulations to the Act reads as follows:

"(9) Subject to subsection 7 of section 31, no licence holder shall lease or contract out by any manner the business or part of the business conducted from the licensed premises."

Section 5, Subsection 9(a) of the Regulations to the Act reads as follows:

"(9a) Notwithstanding subsection 9, the holder of a licence may enter into an agreement with a person or persons to manage the business operated from the licensed premises provided that the agreement does not require that,

- (a) more than 10 per cent of the gross sales of liquor; or
- (b) more than 49 per cent of the net profits from the licensed premises,

is paid to such person or persons."

It is clear that a separate licence would be needed pursuant to the provisions of Section 5, subsection 9 if in fact the parties had entered into a Lease or contract with respect to the licensed premises or part of them. It is also the view of the Tribunal that notwithstanding the evidence tendered by Mr. Best that in fact the Estaminet Investments Limited had surrendered the effective control and management of Dining Lounge No. 5 to Shelsi Holdings. When the Tribunal considered whether or not the Shelsi group would have been able to license the room separately, it is clear that they would have had to have the same licensed separately as a Dining Lounge and would then have had to enter into active competition with Estaminet Investments Limited with respect to the sale of food. It is also questionable that Dining Lounge No. 5 operated as a separate entity would have been economically viable if in fact the provisions of Section 6(5) had to be complied with. The Tribunal is also led to the conclusion that the result of the arrangement that was entered into by Estaminet and Shelsi was to in effect allow Shelsi to run a Lounge operation even though Shelsi could not have obtained a Lounge licence for that portion of the Estaminet premises.

It is the view of the Tribunal that one of the purposes of Section 5(9) of the Regulation is to allow the Liquor Licence Board to exercise some control over:

- (a) The person or persons who run the establishment and their qualifications including their financial responsibility;
- (b) To ensure that the obligations and responsibilities of the Act are adhered to and to ensure that the Board at all times has someone to look to to enforce those obligations and responsibilities; and
- (c) To prevent licence splitting or arrangements which would have the same effect indirectly.

Section 5(9) is very specific when it talks about a leasing or contractual arrangement with respect to the licensed premises or any part of the licensed premises in any manner. On the other hand, Section 5 (9a) talks of managing the licensed premises. It is the opinion of the Tribunal that Section 5 (9a) is meant to apply to a Management Agreement which pertains or covers the whole of the licensed premises and not bits and parts. To hold otherwise would be to allow licence splitting arrangements which are contrary to the intent of the Act in the view of the Tribunal.

It is the Tribunal's opinion that the present arrangements between Estaminet and Shelsi are in fact contracts which contravene Section 5(9) of the Regulations notwithstanding the attempt to categorize them as Management Agreements. Further, the Tribunal is of the view that Section 5, Subsection 9a affords the Licensee no relief with respect to this arrangement even though there was an attempt to amend to comply with percentage arrangements as set out in the Regulations. In other words, since the Agreements pertain only to a part of the licensed premises it is the Tribunal's opinion that Section 5, Subsection 9 is breached.

There is no clear indication on the record that the Board considered the question of Section 5, Subsection 9 of the Regulations and it is clear from the comments of Counsel for the Licensee that his attention had not been directed to that problem. The Tribunal is concerned that such arrangements could create indirectly a new category of Licensee because there is no infringement of Section 6(5) in the opinion of the Tribunal. The Tribunal feels that the early closing hours which were prescribed by the Board as a penalty are not suitable when dealing with Section 5, Subsection 9 of the Act but that it is in fact the arrangement between Shelsi and Estaminet which must be looked at and scrutinized.

In considering the matter, the Tribunal is of the view that section 15 allows it to look at all of the operations of the Licensee and it is clear that the parties and perhaps the Board have not considered this issue. The Tribunal is mindful of the implications of this decision and the imposition of any term and condition which would have the effect of revoking the Dining Lounge licence in Dining Room No. 5.

The Tribunal therefore revokes the Order of the Board dated the 25th day of September, A.D., 1979 and finds that:

1. The Licensee is not in contravention of Section 6(5) of the Regulations.
2. That the Licensee is in breach of Section 5(9) of the Regulations in that it has contracted out a part of its business.

In order to afford the Licensee and Shelsi some time to conclude the present arrangement or to enter into an arrangement which does comply with the Act the Tribunal directs the Board to review the arrangements between the Licensee and Shelsi after the 1st day of March, A.D., 1980 in order that the Board may, in its discretion, consider attaching a term and condition to the Dining Lounge licence of the Licensee or a revocation of a portion of the Dining Lounge Licence as it relates to Dining Lounge No. 5. In the event that Estaminet and Shelsi agree to terminate their arrangements before the 1st day of March, A.D., 1980 then the matter shall be considered to be at an end as of the date of the termination providing the Licensee notifies the Board in writing.

None of the foregoing shall be construed so as to impede the Board in carrying out its normal inspection or investigations from time to time with respect to licensed premises or with respect to other violations of the Act or Regulations as they relate to the licensed premises.

The Tribunal further directs the Licensee Estaminet Investments Limited that pending the review by the Board it shall remain solely responsible for the day to day operations of Kelly's At The Tree Top particularly as they relate to compliance with the Liquor Licence Act, the Regulations and amendments thereto.

GRAYSTONE TAVERN

Dining Lounge Licence
issued to
MAX WIEDEMANN LIMITED
APPEAL FROM ORDER ATTACHING TERM AND CONDITION

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE - CHAIRMAN as
CHAIRMAN
BARBARA J. SHAND and
M. GALE MCAULEY, MEMBERS

COUNSEL: D.R. ARTHURS, representing the Licensee
S.A. GRANNUM, representing the Liquor
Licence Board

DECISION: October 22, 1980

Max Wiedemann Limited is the Licensee (Licence No. 090516) of the establishment classified as a restaurant known as Graystone Tavern, 183 Yonge Street South, Aurora.

The licence issued to the Licensee as of June 13th, 1979, is in respect of the following rooms located at the above address:

1. Main Floor - west section
2. Main Floor - east section
3. Main Floor - south centre section
4. Main Floor - west section outdoor area.

The above accommodation has total capacity of 324 persons and will herein be referred to as follows:

Dining Lounge No. 1-61

Dining Lounge No. 2-166

Patio - 57

Lounge and Waiting Area - 40

On October 29, 1979, the Liquor Licence Board issued a Notice of Proposal to attach to the Dining Lounge and Lounge Licences for this establishment a Term and Condition that:

"The sale and service of liquor in the establishment shall cease at 10:00 p.m."

for the following reasons:

"The Licensee is carrying on activities that are in contravention of Section 6, subsection (5) of the Regulation 1008/75 under the Liquor Licence Act, 1975, and in particular, the total receipts from the sale of liquor in the Dining Lounge have exceeded the total receipts from the sale of food in each month during the period commencing March, 1979, and ending September, 1979."

At a meeting held before the Liquor Licence Board on December 3, 1979, to consider its proposal, the Board indicated that it would adjourn the Hearing and would refrain from taking any action relevant to the aforementioned 'proposal' pending a review by the Board of the food and liquor figures covering the months of January, February and March, 1980. The Licensee was advised that the findings of the Board at that time would determine what action, if any, would be taken depending solely on the results disclosed by the aforesaid monitoring of the food and liquor sales. The further monitoring took place.

The Board's investigator, Steven Holubko, gave evidence at the Board's subsequent Hearing as to his investigation of the establishment on Thursday, March 6, 1980, and Friday, March 7, 1980, which disclosed a continuing imbalance.

As a result at a subsequent Hearing on May 22, 1980, the Board found that the aforesaid contravention exists and issued its Decision to attach a term and condition to the Dining Lounge Licence until such time as the requirements of Section 6, subsection (5)(a) of Regulation 1008/75 are satisfied.

At the Tribunal Hearing, the Secretary's Minutes of the Board's Hearings of December 3, 1979, and May 22, 1980, disclose efforts made by the Board dating back to August 1979, in which various suggestions were made to the Licensee

to solve the food/liquor ratio imbalance. The problem facing the establishment was simply that, although Dining Lounge No. 1 was and still is a very elegant and tasteful dining lounge facility, the larger area, being Dining Lounge No. 2, is the complete reverse. It operates as a 'Disco' in which very little food is sold and very little emphasis, if any, is placed by management on the sale of food. The lounge does no business until after 8:00 p.m. and is patronized solely by a younger crowd who obviously come, not to eat, but to be entertained by a disc jockey who plays mostly disco music, and to drink.

A great deal of the evidence submitted by the Licensee at the Tribunal Hearing dealt with efforts which had been made, no doubt sincerely, to upgrade menus, increase advertising and to encourage the elegance of dining at this establishment. In the Tribunal's opinion, this essentially applies to the areas other than Dining Lounge No. 2, where, in the latter, basically half the capacity of this restaurant is contained. Unfortunately for this Licensee, the Licence issued under the Act refers to the establishment as a whole, including of course Dining Lounge No. 2.

The Tribunal finds that there has been by this Licensee over an extended period of time a clear breach of Section 6, subsection (5) of the Regulation.

The sole question to be determined is whether the Licensee did or did not meet the food/liquor ratio, and not whether it intended to sometime in the future.

Certain criteria have formed the basis of action which has been taken by the Board and the Tribunal to determine compliance with the Regulation. Firstly, is the necessity for finding that the operation by the Licensee is a bona fide restaurant (food) operation. It is evident that the operation of Dining Lounge No. 1 in itself comes within the meaning of that criterion. However, it is necessary to look at the total operation to determine whether the total operation meets the criterion, and the Tribunal finds that such is not the case, since Dining Lounge No. 2 cannot by any stretch of the imagination be described as a dining lounge operation. With respect to the second criterion, it must be found that reasonable efforts are being made by the Licensee to meet the requirements of the Regulation. With respect to Dining Lounge No. 2, the Licensee has been and still is, confronted with an almost impossible situation. The evidence given by the Board's investigator and inspector has indicated that efforts have been made by the Licensee to increase the sale of food, but

most of these efforts have been directed at the improvement of the facilities affecting Dining Lounge No. 1 and the other areas, excluding Dining Lounge No. 2. With respect to criterion No. 3, whether a reasonable success toward the goal of meeting the requirements in a reasonable period of time is being had, the figures above speak for themselves. The Board has exercised patience in allowing the Licensee time to reassess its efforts to make the operation as a whole comply with the Regulation, but the latest monitoring figures do not reflect reasonable success.

The Tribunal is cognizant of the regard held for this operation by the community as exhibited by the evidence of the Mayor of Aurora and the former Deputy Police Chief for York Region, and is not unsympathetic to the very real problem faced by this well-established and well-patronized establishment. Nevertheless, complete compliance with the Act and its Regulations is a situation faced by every Licensee.

The Tribunal finds therefore that the Licensee has been in continuing breach of the Regulation, being Section 6, subsection (5) (a) of the Liquor Licence Act's Regulation, and that the Board is empowered to take the action it has.

The Liquor Licence Appeal Tribunal hereby confirms the Decision of the Liquor Licence Board of May 22, 1980, for the reasons herein and directs the Board to set the effective date of the commencement of the attachment of the Term and Condition.*

*Note: The above decision was appealed to the Supreme Court of Ontario (Divisional Court). The appeal had not been concluded at the time of this publication.

KARLIN HOTEL, Oshawa

Lounge Licence, Public House Licence
issued to
SCHWEPOL HOLDINGS LIMITED
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
GORDON I. PURVIS, Q.C., VICE-CHAIRMAN
BARBARA J. SHAND, MEMBERS

COUNSEL: S. SCHWARTZ, representing the Licensee
S.A. GRANNUM, representing the Liquor Licence Board

DECISION: OCTOBER 27, 1980

This was a hearing held on October 21st, 1980, before the Liquor Licence Appeal Tribunal sitting at Toronto.

At the conclusion of the hearing in the presence of the Members, who concurred orally, the Chairman gave an oral decision:

The Tribunal finds that on the 29th day of February, 1980, the Licensee did sell liquor contrary to Section 6 (1) of the Regulations under The Liquor Licence Act. One Paul Young, a bartender known by the Licensee to have been in the business for some eighteen years and associated with the Licensee for seven, did serve two police officers and three other unspecified individuals with beer. Mr. Young was forthright in admitting this action. For the record the Tribunal notes that it is the only occasion in respect of which such finding is made.

On that date the principal of the Licensee and senior management were both away. However, it is clear that historically and on that occasion the bartender was, for all intents and purposes, in charge on behalf of the Licensee, and the Licensee has the responsibility for that action.

In respect of this incident, a conviction was registered against the Licensee. The Administrative action of the Board is separate and apart from any other action taken by other authorities under the Act.

The Tribunal finds that the conduct with respect to this incident is past conduct within the meaning of Section 6 (1) Paragraph (c)(ii), in that upon an application for a Licence, the action of such a principal and senior management in respect of the action of one placed in charge could be the basis for a disqualification to a Licence under that governing section. Accordingly, there is a basis for the penalty of suspension by the Board.

The Tribunal finds that on or about the 22nd of November, 1979, the Licensee did permit drunkenness in that it permitted the continued presence of one "Frank" and two other male companions to be in the premises while intoxicated. The evidence given in respect of the condition of Frank and the other two male persons given by a police officer is accepted by the Tribunal with respect to the condition of the persons.

The Tribunal finds that on the 6th day of December, 1979, the Licensee did permit drunkenness and disorderly conduct in that it permitted to be in the premises a patron who was highly intoxicated, and who was struck by another patron and fell to the floor. There is also evidence that in respect of the premises, a conclusion can be drawn that customers were engaged in an altercation which constitutes disorderly conduct.

In respect of the action of permitting such conduct, the Tribunal notes that no evidence was placed before it on behalf of the Licensee that there were such precautions taken and supervision given as would ensure that the condition of intoxication would not be reached. There had been instruction to the employees but no affirmative action nor reasonable steps were taken to prevent such an occurrence. The Licensee must take responsibility for the incidents. Accordingly, there has been a breach of Section 5(4) of the Regulations. The Tribunal notes that the approach of Paul Young to the question of intoxication is one wherein if the customer created no problems, there was no intoxication within the meaning of the section. He admitted very forthrightly that there were many occasions upon which the customers were in such condition that, in his judgment, for the welfare of the customer the customer should be sent home in a cab.

The Tribunal finds accordingly that there is a basis by reason of past conduct, and Section 5 (4) for a finding of a breach of condition and action of suspension by the Board.

Mr. Schwartz very eloquently presented the case with respect to the penalty to be imposed, submitting that the penalty of twenty-one days is harsh and that there would be economic difficulty resulting from such a penalty.

Mr. Grannum has directed attention to the fact that permitting drunkenness and disorderly conduct, and the service of liquor outside the hours are serious matters. At a time when there is much controversy about hours of service, one would think that attention would be directed by Licensees with respect to absolute compliance therewith.

The Tribunal is of the opinion that anyone who has been in the business which involves the service of alcoholic beverages should be aware that a number of matters, of which drunkenness and disorderly conduct are two, are very serious matters and that a very high standard is to be expected of those who have licences. It is true that the Licensee has a record of seven years of no other incidents requiring action by the Board. However, the standard required is greater than that of incidents taking place only during a period of seven years.

Mr. Grannum has pointed out the fact that the sanctions should be such as to deter others; those who are in the business must be aware of the seriousness of the matter and the high standard which is expected of them. If every Licensee were permitted such incidents within the period of seven years, the administration of liquor laws in this province would be in a very difficult situation. The risk of harshness and economic impact of penalty are matters of which those who are in the business must be aware.

The Tribunal is loath to change the penalty imposed by the Board unless there is substantial reason for making such a change. Harshness and economic impact in respect of which there can be no question are not in the administration of the laws substantial reason.

The Tribunal has established that the Licences are separate. There is no specific basis upon which the Board could have suspended the Lounge Licence. In respect of that operation there was no evidence of any kind placed before the Tribunal.

Accordingly, the Tribunal alters the decision of the Board in that the Public House Licence only be suspended for a period of twenty-one days, the commencement of which is to be determined by the Board.

LALAZAR RESTAURANT, Scarborough

Board decision to issue
Dining Lounge Licence
to LALAZAR RESTAURANT

MEETING TO DECIDE STATUS TO APPEAL and deal with
request for extension of time for the giving of a
notice requiring a hearing by the Tribunal.

TRIBUNAL: JOHN YAREMKO, Q.C. CHAIRMAN
BARBARA SHAND, MEMBER
GALE McAULEY, MEMBER

COUNSEL: J. STEVEN CASEY, Q.C., representing the Borough of
East York
S.K. SANWALKA, representing the Applicants
S.A. GRANNUM, representing the Liquor Licence Board

DECISION: JUNE 16, 1980

On the 16th day of April, 1980, a Notice of Motion was
filed with the Liquor Licence Appeal Tribunal on behalf of the
Borough of East York for an Order:

"Granting leave to The Corporation of the
Borough of East York to launch a fresh
appeal against the Decision of the Board
and for an Order extending the time for
appeal nunc pro tunc."

The right of the Borough to require a hearing was challenged
by the Board and by the Applicants.

The Tribunal finds:

1. By application dated the 20th of August, 1979, the
Applicants Salim Ahmad and Raja Waheed, who carry on
business in partnership, applied for a Dining Lounge
Licence for premises known as Lalazar Restaurant.
2. The Applicants have operated the restaurant since on or
about May 1979.
3. The fact of the application was published in the Toronto
Star on Wednesday, September 19 and Wednesday, September
26, 1979 and a public meeting in respect thereof was
held at the Board's offices at 55 Lakeshore Blvd. East,
Toronto, on Thursday, October 4, 1979.

4. At the said public meeting several persons including Mona Aggarwal appeared in opposition to the issuance of a Dining Lounge licence to the Applicants.
5. The Borough of East York was not represented at the meeting. The following resolution of October 1, 1979 was placed before the Board.

Resolved "that the Liquor Licence Board of Ontario be again advised of East York's concerns and continuing efforts in reducing the parking demands in the area of Donlands Avenue and O'Connor Drive;

And be it further resolved that the Mayor and Ward Alderman be authorized to appear before the Board in connection with the liquor licence application for 429A Donlands Avenue, if they so desire."

6. On the 15th day of October, 1979 a Notice of Proposal to refuse the said licence was issued by the Board and on the 13th day of November 1979 a Notice of Hearing to deal with the proposal at the Council Chambers of the Borough of East York on December 12, 1979 was issued.
7. A copy of the notice was served on the Borough.
8. The Borough was not represented at the hearing held in its own Council Chambers.
9. Mona Aggarwal appeared at the hearing in opposition to the issuance of the licence and was represented by her Counsel, David Chaiton. On her behalf Michael Vince, By-law Enforcement Officer of the Borough, was subpoenaed.
10. Other concerned citizens attended in opposition.
11. There was before the Board a letter from the Borough dated December 5th, 1979 respecting the hearing.

"The Council recommended that the Liquor Licence Appeal (sic) Board be advised of the Borough's concerns regarding parking problems in the area and of the Borough's intention to pass a by-law in connection with a 60-seat requirement for licensed establishments"

12. The Board issued its decision on the 7th of January, 1980 and a copy of the same was received by the Borough on the 9th of January, 1980.
13. By letter dated January 18th, David Chaiton requested a hearing before the Tribunal on behalf of Mona Aggarwal.
14. By letter dated March 18th, David Chaiton advised the Tribunal that Mona Aggarwal "wishes to abandon her appeal."
15. By letter dated 24th of March the Registrar confirmed a discussion with the Counsel for the Board wherein he indicated he had no objection to the withdrawal of the appeal. The Registrar advised "that the file is considered closed."
16. By letter dated March 25th, David Chaiton acknowledged an earlier letter from the Registrar. He explained the reason for the withdrawal by Mona Aggarwal of her appeal and also stated "I am advised, however, that many of the local residents wish to pursue an appeal. Would you kindly advise me as to whether this is possible and if so, I will contact them."
17. By letter dated the 28th of March the Registrar referred David Chaiton to Sections 15(1) and 16(8) of the Liquor Licence Act.
18. The Registrar did not hear further from Mr. Chaiton.
19. The time for requiring an appeal expired on or about the 24th of January, 1980.
20. On the 8th day of April, 1980, Council of the Borough of East York passed a resolution instructing the Borough solicitor to proceed to take steps that the Borough of East York may become an appellant in the proceedings.

The issue before the Tribunal at this meeting is whether an extension of time for the notice requiring a hearing should be granted by the Tribunal. Relevant sections of the statute are as follows:

"Section 15(1)-Any party to a proceeding before the Board under Section 13 who is aggrieved by the decision of the Board may, within fifteen days after he is served with the decision of the Board, mail or

deliver to the Board and the Tribunal a notice in writing requiring a hearing by the Tribunal."

"Section 16(8)-Notwithstanding any limitation of time for the giving of a notice requiring a hearing by the Tribunal and where it is satisfied that there are prima facie grounds for granting relief and that there are reasonable grounds for applying for the extension, the Tribunal may extend the time for giving the notice either before or after expiration of the time so limited and may give such directions as it considers proper consequent upon such extension."

There is required a two-fold determination. The first determination is whether the Tribunal is satisfied that there are prima facie grounds for granting relief. In respect of whether a licence should be granted herein, the issue is a determination that the issuance of the licence does not come within the exception to entitlement as being "not in the public interest having regard to the needs and wishes of the public in the Municipality in which the premises is located." It is clear from the representations made indirectly heretofore in these proceedings by the Borough that the Borough's concern is with the question of parking. At no time has the Borough taken the position that the issuance of the licence "is not in the public interest having regard to the needs and wishes of the public in the Municipality." It is noted that the Board in its decision was of the opinion that the "responsibility for" parking facilities is in the hands of the Municipal council and does not fall within the jurisdiction of the Liquor Licence Board. The Tribunal is in agreement with the Board in this regard. This is not to say that citizens in expressing their needs and wishes cannot place before the Liquor Licence Board or Tribunal their concerns about parking as indicating their bonafides as to their wishes but the determination of the public interest is to be based on an expression of needs and wishes. The Tribunal is of the opinion that the Borough has not satisfied the Tribunal that there are prima facie grounds for granting relief.

A second determination is whether there are reasonable grounds for applying for the extension. A review of the chronology of events in these proceedings indicates that the Borough did not take a direct active role in the proceedings but left it to the interested citizens to do so. The Borough was advised at all times. It received a copy of the decision shortly after it was rendered. The Borough took no action. One citizen did take action to initiate a hearing before the Tribunal but withdrew the same in due course. Reliance by any person on action

by someone else is at a risk. Any party to the proceedings, Borough or citizen, who felt aggrieved ought to have taken separate action in self interest. The Borough which to date played a minor indirect role wishes to play a dominant direct role after the time for so doing has long passed. No other citizen in respect of whom there is statutory provision for requesting a hearing of the Tribunal saw fit to do so. It is true that the Borough moved expeditiously when it was advised of the withdrawal of the appeal on March 31st. Its action was not on its own initiative as a party to the proceeding aggrieved.

In this matter the Registrar had noted the proceedings closed. It would be very unfair to the Applicant herein who made considerable expenditures in respect to matters requiring finalization prior to the issuance of the licence, that the matter be re-opened at this time.

The Tribunal hereby determines that it is not satisfied that there are prima facie grounds for granting relief nor that there are reasonable grounds for the application for the extension and accordingly the Tribunal does not extend the time for giving the notice requiring a hearing by the Tribunal.

LA STELLA RESTAURANT, Toronto

Application for Dining Lounge Licence and
Entertainment Lounge Licence
by Giuseppe Parentela
APPEAL FROM PROPOSAL TO REFUSE TO ISSUE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JOHN ERICKSON, Q.C., VICE-CHAIRMAN
BARBARA J. SHAND, MEMBER

COUNSEL: J. ZWICKER representing the Applicant
S.A. GRANNUM representing the Liquor Licence Board

DECISION: AUGUST 29, 1980

LA STELLA RESTAURANT is a restaurant establishment located at 1764 St. Clair Avenue West, in the City of Toronto. The said establishment is located within that area of the said City which was annexed to the City of Toronto on May 1, 1909, and which was known as the City of West Toronto prior to annexation.

A formal application for a liquor licence dated April 21st, 1980 was filed with the Board and the applicant sought to obtain the class of licences known as Dining Lounge and Entertainment Lounge as defined in Ontario Regulation 1008/75 Section 2.

On the 25th day of June, 1980, the Board, pursuant to The Liquor Licence Act, 1975, Section 12, proposed to refuse to issue a liquor licence to the applicant

"for the reason that the applicant is not entitled, under Section 6(1)(e) of the said Act, to a liquor licence because the applicant will be carrying on activities that are contrary to the Act and Regulations:

- a) The premises known as 1764 St. Clair Avenue West, Toronto is situate in the former municipality of West Toronto which, in 1909, was annexed to the City of Toronto in accordance with the City of Toronto Act of Edw VII, C 125.
- b) The municipality of West Toronto had, in 1909, a by-law 551 prohibiting the sale by retail of alcoholic beverages in the municipality.
- c) No licences have been issued by the Board for premises in the former municipality of West Toronto.

- d) The results of votes held in the former municipality to approve the issuance of liquor licences have been negative, the most recent of which was held in December, 1972.
- e) The issuance of a Dining Lounge and Entertainment Lounge licence would be contrary to The Liquor Licence Act, 1975 S 26 and Ontario Regulation 1008/75 S 50(1) and (3)."

Section 26 of the said Liquor Licence Act provides as follows:

"Subject to Sections 27 and 28, and the Regulations, no licence shall be issued or government store established of a class for the sale of liquor in a municipality,

(a) in which the sale of liquor under that class of licence or store was prohibited under the law as it existed immediately before this Act comes into force; or

(b) although the sale of liquor is not prohibited by law, no licence has been issued or government store established since the 16th day of September, 1916."

Section 50(1) of Regulation 1008/75 provides as follows:

"The issuance of a dining lounge licence to a hotel, restaurant or theatre is confined to hotels, restaurants and theatres situated in a municipality where,

(a) it was not prohibited by the law as it existed immediately prior to this Regulation coming into force for the Liquor Licence Board of Ontario as continued under The Liquor Licence Act, being Chapter 250 of the revised Statutes of Ontario, 1970 to issue a dining lounge licence or lounge licence to a hotel, inn, tavern or theatre; or

(b) an affirmative vote has been taken pursuant to Section 27 of the Act on question 6 or 7, as the case may be, of Section 52."

Subsection (3) is a provision in respect of an entertainment lounge similar to subsection (1).

Issues to be determined in this matter are:

- (1) An interpretation of the applicability of the words "in a municipality"
- (2) The time of the applicability of the prohibition herein
- (3) Whether a licence pertinent to the matter has been issued.

The history of relevant bylaws and statutes is as follows:

Between 1897 and May 1, 1909, the City of West Toronto enacted By-law 551, pursuant to the then existing Liquor Licence Act of Ontario. The purpose of the said By-law was to prohibit the retail sale of liquor within the City of West Toronto. Prior to enactment of By-law 551, licences for the retail of liquor had been issued in the City of West Toronto.

On May 1, 1909, the City of West Toronto was annexed as aforesaid by virtue of the City of Toronto Act, 9 Edw VII, c. 125. Section 1, subsection 8 thereof, recited the nature and effect of By-law 551 and further provided that the said By-law remain in force in the area affected until specifically repealed by a By-law of the City of Toronto, which by-law was to be approved by a majority of the electors then qualified to vote in the annexed area. Such approval by the qualified electors in the annexed area was to be given in accordance with the provisions of the then Liquor Licence Act.

The said City of Toronto Act, was enacted in the light of the provisions of the Consolidated Municipal Act of Ontario, 3 Edw VII, (1903), c. 19, which provided as follows:

26(1) "The Council of any village or town may by resolution declare that it is expedient that such village or town be annexed to an adjacent city, town or village, and in case the Council of such city, town or village passes a resolution to the same effect, the Council of such first mentioned village or town may submit the resolution to the electors and if a majority of the electors vote thereon are in favour of the resolution,

the Lieutenant-Governor in Council may by proclamation annex the one municipality to the other upon such terms as may have been agreed upon or determined by arbitration."

26(2) "Subject to any variations made by the terms agreed upon or settled in manner aforesaid, the municipality annexed to the other shall be subject to the provisions of this Act having regard to the annexation of territory to a village, town or city."

56 "In case an addition is made to the limits of any municipality, the by-laws of the municipality shall extend to the additional limits, and the by-laws of the municipality from which the same has been detached shall cease to apply to the addition, except only by-laws relating to roads and streets, and these shall remain in force until repealed by by-laws of the municipality to which the addition has been made. R.S.O., 1897, S.223, s. 56."

In 1916, the Ontario Temperance Act, 6 Geo. V, c.50 repealed the then Liquor Licence Act aforesaid.

The law as it existed immediately before the Liquor Licence Act, 1975 (Section 26) came into force is set out in Sections 70 and 72 of the Liquor Licence Act R.S.O. 1960 c.218, Section 70 being renumbered as Section 71 of the Liquor Licence Act, R.S.O. 1970 and providing as follows:

"Except as provided by this Act and the Regulations, ... no premises shall be licenced in any municipality or part of a municipality in which at the time of the coming into force of the Ontario Temperance Act a by-law passed under the Liquor Licence Act, being chapter 215 of the revised Statutes of Ontario, 1914, or any other Act was in force prohibiting the sale of liquor by retail until a vote has been taken in the manner provided in Section 72."

On June 3, and 4, 1970, the Ontario Court of Appeal considered the provisions of the City of Toronto Act, 9 Edw. VII, c. 125, Section 1, Subsection 8, and its effect on By-law 551, aforesaid, in the case of Croation Estates Limited, et al v. City of Toronto, (1970) O.R. 701. The Appellant in that action, sought a declaration that By-law 551 of the former City of West Toronto was no longer in force. Alternatively, the Appellant sought a declaration that the procedure for the repeal of By-law 551 should be carried out in accordance with the provisions of the Liquor Licence Act, R.S.O. 1960, c.218. The trial was held before Mr. Justice Lacourciere who dismissed the action. That judgment was set aside on appeal and in its place, judgment was given declaring that By-law 551 of the former City of West Toronto ceased to be valid as of 1916 with the coming into force of the Ontario Temperance Act. The Court of Appeal held that the said Ontario Temperance Act had the effect of repealing the Liquor Licence Act, R.S.O. 1914, c.215, and all local option by-laws which had been enacted pursuant to that act. As a result, the Court of Appeal held as follows:

"...we are all of the opinion that By-law 551, just as any other by-law without any such legislation with respect to it as the City of Toronto Act, 1909, was repealed for all purposes by the repeal of the former Liquor Licence Act which took place under the provisions of the Ontario Temperance Act,"

It is patent that in order to find that By-law 551 was repealed by the Ontario Temperance Act there must be a finding that the by-law was in force up to the time of repeal i.e. the coming into force of the Ontario Temperance Act.

Counsel for the applicant submitted that By-law 551 was not in effect at such time, maintaining that it had been repealed earlier on the 1st day of July, 1913 with the coming into force of the Municipal Institutions Act, 3-4 Geo. V. c.43 which repealed Section 26(2) of the aforesaid Consolidated Municipal Act, and whereby Section 56 of the said Consolidated Municipal Act, was repealed and replaced by Section 33 of the said Municipal Institutions Act, namely:

"Where a district or a municipality is annexed to a municipality, its by-law shall extend to such district or annexed municipality, and the by-laws in force therein shall cease to apply to it, except those relating to highways, which shall remain in force until

repealed by the Council of the municipality is annexed and except by-laws conferring rights, privileges, franchises, immunities, or exemptions which could not have been lawfully repealed by the Council which passed them."

With his submission that the substance of By-law 551 was to prohibit "...a privilege previously in existence in the former City of West Toronto, namely with respect to the issuance of liquor Licences", he also submitted that the by-law did not come within the exception set out in Section 33. He submitted that had the provision of the said Municipal Institutions Act of 1913, specifically Section 33, been argued that the Court of Appeal would have been in a position to hold that said By-law 551 had been repealed effective the 1st day of July, 1913, being the date that the said Municipal Institutions Act came into force. The Tribunal does not agree with the latter submission, and accepts the decision of the Court of Appeal as a definitive finding that By-law 551 continued right up to the coming into force of the Ontario Temperance Act, which thereupon repealed By-law 551, and its conclusion that Sections 70 and 72 of the Liquor Licence Act, R.S.O. 1960, c. 218, were applicable to that part of the Municipality of the City of Toronto, known formerly as the City of West Toronto.

Counsel for the applicant took the position that the Court of Appeal in the Croatian Estates case held only that if 60% of the voters of the former City of West Toronto, voted affirmatively, with regard to the issuance of liquor licences in the area, it would be lawful for such licences to be issued by the Liquor Licence Board of Ontario, and submitted that the decision did not hold that the very sale of liquor in the area previously known as West Toronto, was prohibited. The Tribunal is of the opinion that something which cannot be done unless something else occurs is a prohibition and a provision for a removal makes it none the less so.

In August, 1971, the following question was submitted to the Supreme Court of Ontario in an unreported decision of the court:

"Is the Liquor Licence Board of Ontario correct in refusing to consider preliminary applications for liquor licences for premises located in that part of the City of Toronto, formerly known as the City of West Toronto, on the ground that there must further be held and reported an affirmative vote by 3/5th of the electors voting, in

compliance with the provisions of the Liquor Licence Act, R.S.O. 1960, c.218."

The decision of the Court was:

"The answer to the question posed is yes. The right to hold a vote is retained by Section 70 of the Liquor Licence Act and no right to grant a liquor licence without such a vote is given to the Board by Section 24....."
Stewart, J. in the Matter of a Case Stated by the Liquor Licence Board of Ontario re Vesuvio Pizzeria and Spaghetti House and the Westway Hotel.

The Tribunal is of the opinion that Mr. Justice Stewart's decision is in accordance with the findings of the Court of Appeal in the Croatian Estates case.

The Tribunal is of the opinion that the case of Moon-glow Restaurant Ltd. and Rodgers (1966) 2 O.R. 355 cited by counsel for the applicant is not supportive of the applicant's position. It is clear that by his reference: "why such care was taken specifically to preserve the liquor by-laws in the 1909 Act of annexation of West Toronto" that Mr. Justice Stewart took the position that the situation in West Toronto was different from that of North Toronto. It is further to be noted that His Lordship's reference: to S. 33 of the Municipal Act 1913 (Ont) c.43 indicated that what applicant's counsel submitted as not coming within the exception of the section was so encompassed namely: "Bylaws....such as could not be repealed by the council of the annexed municipality without a vote such as for example the liquor by-laws. As stated in the Croatian Estates case By-law 551 preserved for the voters in the annexed area the right to vote upon any question of repeal.

The premises have been used as a banquet hall since 1968 and have been used for wedding receptions and other social events where liquor has been served under the authority of a Special Occasion Permit.

Counsel for the applicant filed as exhibits special occasion permits (sale) which had in recent years been issued in the annexed area and accordingly submitted that a licence or licences have been issued since the 16th of September 1916. Counsel for the Board maintained, without the submission of evidence with respect thereto, that the permits had been issued inadvertently. It is not necessary for the Tribunal to rule upon the validity of the issuance of the permits for the Tribunal is of the opinion that the issuance of a permit is not the issuance of a licence within the meaning of Section 26 of the Liquor

Licence Act. Though there are many parallel sections applicable it is clear that a distinction between "permit" and "licence" is maintained throughout the Act.

Counsel for the applicant submitted that Section 26 of the present Liquor Licence Act directs the Liquor Licence Board not to issue a licence for the sale of liquor only if the sale of liquor was prohibited by law immediately before 1975 in the entire municipality, or if no licence had been issued since the 16th day of September, 1916, in the entire municipality. He submitted that the only municipality to which Section 26 can be deemed to refer is the Municipality of the City of Toronto. He further submitted that had the legislature intended to retain the provisions for licensing respecting 'a part of a municipality' it would have stated so.

The Tribunal does not agree. The Tribunal is of the opinion that had the Legislature intended such a sweeping change which would have removed not only from the residents of the annexed former West Toronto but also from all other comparable areas throughout the Province the right, so assiduously preserved by the Legislature through the years, to vote upon repeal by way of voting upon questions set out in the Act, the Legislature would have set forth such change clearly.

That the legislature continued to be assiduous in the preservation of the status quo under such circumstances i.e. annexations, and to continue the voting procedures is evidenced by Section 34(1) of the 1975 Statute, namely:

"(1) No amalgamation of a municipality with another municipality and no annexation of the whole or a part of a municipality to another municipality affects the operation of this Act at the time of the amalgamation or annexation in the municipality amalgamated or municipality or part annexed or elsewhere until such operation is affected pursuant to a vote under this Act in the municipality amalgamated or municipality or part annexed, as the case may be, 1975, c.40, s.34(1).

(2) The persons qualified to sign a petition pursuant to section 27 or 28 are the persons whose names appeared on the list of electors, as revised, prepared for the previous municipal election held in the municipality amalgamated or municipality or part annexed, as the case may be.

(3) The persons qualified to vote upon a question or questions are the persons who would be eligible to vote at an election held in the municipality amalgamated or municipality or part annexed, as the case may be, held pursuant to The Municipal Elections Act, 1977, c.62 s.125."

The Tribunal is of the opinion that reading of the Act in its entirety must lead to a finding that within a municipality where the conditions of Sections 26(a) and (b) apply no licence shall be issued except subject to the provisions of Section 27.

The Tribunal finds that within the Municipality of Toronto in that part formerly known as West Toronto the sale of liquor was prohibited under the law as it existed immediately before the Liquor Licence Act, 1975 came into force and accordingly no licence shall be issued in that part until an affirmative vote is had in accordance with Section 27(2).

In December, 1972, a liquor plebiscite was held in the former City of West Toronto, and the required affirmative vote did not occur.

The Tribunal finds that the general entitlement of the applicant under Section 6(1) of the Act is subject to the above overriding prohibition, and finds further that his entitlement under the section comes within the exception of paragraph (e) that if licenced the applicant will be carrying on activities in contravention of this Act or the regulations.

The Tribunal hereby directs the Liquor Licence Board to carry out its proposal not to issue the Dining Lounge Licence and Entertainment Lounge Licence applied for.

LIGHTHOUSE RESTAURANT

Dining Lounge Licence
to be issued to
LIGHTHOUSE DISCOTHEQUE LIMITED

MEETING TO CONSIDER request for
extension of time for the giving
of a notice requiring a hearing by the Tribunal.

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
GORDON I. PURVIS, Q.C., VICE-CHAIRMAN
BARBARA SHAND, MEMBER

COUNSEL: H.A. PATRICK LITTLE, representing Melanie Battell
and other Applicants
JOHN A. CROSSINGHAM, representing Lighthouse
Discotheque Limited
S.A. GRANNUM, representing the Liquor Licence Board

DECISION: OCTOBER 20, 1980

At the conclusion of the meeting the Chairman gave an oral decision in the presence of the two Members, who orally concurred.

The issue before the Tribunal at this meeting is whether an extension of time for the Notice requiring a hearing should be granted by the Tribunal. The relevant section of the Statute is section 16(8).

There is required a two-fold determination - a determination whether the Tribunal is satisfied that there are prima facie grounds for relief, and a determination whether there are reasonable grounds for applying for the extension.

Dealing with the latter determination first, the chronology of events as set out in the affidavit of the Applicant in paragraphs 3 to 8 inclusive thereof, are the basis upon which the Tribunal concludes that there are reasonable grounds for granting the extension. In paragraph 7 the Applicant, Melanie Battell, refers to an understanding that on the basis of a response to a 'poll' by the Quorum, a Notice requesting a hearing would be filed by the Port Dalhousie Quorum. A reference to the urgent notice to all Port residents shows in the last paragraph thereof, the statement that the Quorum "will not proceed with an appeal unless the majority of Port residents who call wish us to do so." The inference is that if a majority of Port residents who call wish the Quorum to appeal, there would be an appeal proceeded with. That inference by the Applicant explains her inaction. In addition, the Tribunal notes the expedition with which the Applicant moved - once she became aware that the Quorum would not

be filing a Notice. On the same day she attended upon the solicitor with instructions. The solicitor at that time contacted the Liquor Licence Board of Ontario indicating an intent to file an appeal. It is true that the Act requires a Notice in writing. However it has been the practice of the Tribunal to give weight to a communication with the Tribunal within the time limit with respect to an appeal. Had the appellant been in the City of Toronto, there is all likelihood that the written appeal might have been delivered. As a basis for finding reasonable grounds, the Tribunal has accepted and given consideration to a communication within the time limit that indicated an intent. All actions of the Applicant herein are found by the Tribunal to have been reasonable.

With respect to the determination whether there are prima facie grounds for granting relief, the basis of determination of the issuance of a licence is the determination whether the entitlement to a licence comes within the exception as being not in the public interest having regard to the needs and wishes of the public within the municipality in which the premises is located. The nature of the proceedings herein have been such as to leave unclear both the expression of needs and wishes. The direction of the Liquor Licence Board to this aspect must be separate and apart from the basis upon which the needs and wishes of the public is formed. It is to be noted that in the five-page Decision of the Liquor Licence Board only a reference is made with respect to needs and wishes in a recital of the Proposal in the first paragraph of the Decision, and a terse statement with respect to the finding of the Board "that it does not find sufficient evidence to indicate that approval would not be in the public interest".

Evidence has been placed before the Tribunal with respect to the decision of the Quorum not to appeal. The Tribunal does not accept the decision of the Quorum not to appeal as an indication that there is not a substantial position of expression of needs and wishes upon which a refusal of the licence might be based. The Tribunal is of the opinion that a review of the proceedings to date leads the Tribunal to the decision on balance that a hearing de novo should, under the circumstances, be held. The Tribunal is of the opinion that the Applicant has demonstrated prima facie grounds for granting relief.

Accordingly, the decision of the Tribunal in this matter is that the extension of time for Notice requiring a hearing be granted for that period which would make the Notice of Hearing filed valid.

THE LOADING ZONE RESTAURANT

Dining Lounge Licence
issued to
Manfred Schroeter
APPEAL FROM ORDER ATTACHING TERM AND
CONDITION

TRIBUNAL : JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM,
K. P. VAN HAMME, MEMBERS

COUNSEL : TERRENCE JABOUR for the Licensee
S. A. GRANNUM representing the Liquor
Licence Board

DECISION : JUNE 17, 1980

The decision was given orally by the Chairman at the conclusion of the hearing.

Manfred Schroeter is the licensee of the premises known as the Loading Zone Restaurant at 45 Montreal Road, Vanier.

The licence issued is a dining lounge licence in respect of:

ROOMS (2) LOCATED

1. MAIN FLOOR: SOUTH WEST SECTION, capacity 219
2. MAIN FLOOR: EAST CENTRE SECTION, capacity 38

A sketch prepared by the licensee shows: Room #2 as 'Dining-Room' (equipped in a fashion associated with generally a place of dining), room #1 as an area 'bar and lounge' and another substantial area as 'dining lounge and entertainment area' with a stage and dancing floor. Room #2 is the smallest of all the areas.

The licensee acquired the premises on or about the 16th day of November 1978. At the time of the transfer the necessity for compliance with the food and liquor ratio was brought to his attention. At the time of his purchase the licensee exercised a judgment based on statements for two quarterly periods which indicated compliance with the regulations but the balance was fairly close. At the time the premises were acquired the establishment catered to what was described as a "rough crowd" who it appeared came to drink and be entertained

by the disco music provided. After taking over the premises, the licensee determined to change the environment and clientele of the operation and within a relatively short period of time a change did take place.

It came to his attention that the figures upon which he had relied were not factually correct. There was an imbalance by reason of the minimal food sales. The licensee continued to file returns which were incorrect.

Even the incorrect figures indicated that there was an imbalance so that in July of 1979 after filing the statement which indicated that the food receipts during the month of June were 45%, the matter was discussed with him by the Board. On the 19th day of September the Board issued its Notice of Proposal based on the figures supplied. A hearing was held on the 20th of November in regard to the matter and the Board issued its decision. The Board had before it a report of an investigator who monitored the sales for two days. The monitoring showed a substantial disparity between the receipts from liquor and food sold during the day, and indicated that the most significant part of the sales were in respect of liquor after 8:00 p.m. in the evening. In the report the investigator describes the total operation as 'a lounge with an adjoining dining lounge and kitchen'.

After the July meeting, and particularly after the September Notice of Proposal, and the November hearing the licensee initiated various steps to bring about an increase in the food sales. The recent ratios submitted confirms the fact, as the Tribunal finds, that since November 1978 until the 11th day of June the receipts from the liquor sold far exceeded the receipts from the food sold.

The Tribunal finds that there has been by the licensee over this period of time a clear breach of the applicable regulation section 6, subsection 5(a). The Tribunal in these matters has set up certain criteria which have formed the basis of action that has been taken by the Board and the Tribunal in respect of compliance with the regulation, and both counsel have referred to the criteria. The first criterion has been set out as necessity for finding that the operation by the licensee is a bona fide restaurant (food) operation. It is evident that the operation of room #2 which has been referred to as being the restaurant known as 'CASA del SOL' in itself comes within meeting that criterion. However, it is necessary to look at the total operation to determine whether the total operation meets the criterion. The Tribunal finds that the total operation as carried on does not meet that criterion.

Though as testified to by the investigator and inspector there has been a changed atmosphere, a change in clientele and a change in facilities, and though the technical requirements are all there, the operation as it is carried on still has as the significant part thereof the operation of the room #1 which can in no way be described as a dining lounge operation. The licensee has since the November hearing been very forthright with the Board and Tribunal to the degree that on the sketch which he prepared he indicates that there is a 'bar and lounge' and to the dining lounge he has added the words "entertainment area". These illustrate the kind of operation that is still being carried on. It is not a question of the sincerity of the wishes of the licensee. The Board, and the Tribunal has to look at the realism of the operation. With respect to criterion #2 there is a necessity for finding that reasonable efforts are being made by the licensee to meet the requirements of the regulation. The Tribunal has before it a listing of what has been done. The inspector and investigator have been very fair in their testimony in indicating that efforts have been made by the licensee to increase the sale of food. However, in the light of the fact that the licensee was confronted with a disparity during the month of December 1979, following the decision of the Board, of 75% liquor and 25% food, the reasonable efforts on his part should have been without limit. The licensee was confronted with a very difficult if not impossible task, and the Tribunal cannot find the efforts that were expended by him in respect of the total operation inclusive of room #1 were such as can be deemed to be reasonable under the circumstances. The Tribunal does acknowledge again in respect of dining room #2 that the efforts which were made were such as would merit favourable comment. With respect to criterion #3, whether reasonable success toward the goal of meeting the requirements in a reasonable period of time is being had, the figures speak for themselves. During the period of time following his acquisition of the business, apart from the cleaning up process with respect to the establishment, there did not seem to be any extensive effort with respect to the food sales. Though the licensee has acknowledged that he was inexperienced in the field of restaurant at the time he became licensee, it is difficult to comprehend that during the year 1978 and particularly 1979 he would not be aware of the fact that the matter of food liquor ratio had become a significant part of monitoring by the Liquor Licence Board generally and that steps were taken by the Board to see that this regulation was being complied with throughout the province. The Board in this regard had taken extensive action with respect to licensees and this Tribunal has been called upon in a number of instances to deal with these matters. The licensee has had a considerable period of time to bring about a balance even if the Tribunal were to set aside

that whole period of time prior to November 1979 when it is acknowledged and the Tribunal records it, the licensee did a first rate job in bringing into being an operation far more in keeping with the general standards of the Board than carried on previously. The ratio of 75/25 during the six months that followed has on the average remained the same. It has fluctuated from a low of 19% for food to a high of 29% averaged out to 25%. The dollar figure of liquor has fluctuated and so has the food figure, and the Tribunal has noted that the month of May brought about the highest dollar figure in the sale of food. That combined with a lower dollar sale of liquor has brought about the percentage of 71/29. The Tribunal notes that sales of liquor in February 1980 exceeded the sales of liquor in January 1980 by almost \$3,000 whereas the food dollar figures for that period only showed \$1,000 increase. That was on the eve of the month during which the board had indicated to the licensee that there would be a monitoring of the operation. The Tribunal is not unsympathetic to the plea by counsel for the licensee with respect to the results that may follow from such a decision of the Board. That situation is a situation in which every licensee that has appeared before the Tribunal has found himself.

The Tribunal is aware of the application, formal or otherwise by the licensee in respect of an entertainment lounge but it is noted that though that particular ratio required for that purpose has almost been reached it is still short of the balance required. The Liquor Licence Board has the continuing responsibility for administration of the Act and the affairs of this establishment in particular and whatever decision they make in that regard is a matter to be considered by it.

The Tribunal finds the licensee has been in continuing breach of regulation 6 (5)(a), and that the Board is empowered to take the action it has.

THE LIQUOR LICENCE APPEAL TRIBUNAL HEREBY CONFIRMS the decision of the Liquor Licence Board of 20 November, 1979 for the reasons herein and DIRECTS the Board to set the effective date of the commencement of the attachment of the Term and Condition.*

* Note: The above decision was appealed to the Supreme Court of Ontario (Divisional Court). The appeal had not been concluded at the time of this publication.

MISTY BLUE RESTAURANT & TAVERN

Dining Lounge Licence
issued to
Ottaviano Palumbo
APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
BARBARA J. SHAND
GALE McAULEY, MEMBERS

COUNSEL: OTTAVIANO PALUMBO agent acting on his own behalf
S.A. GRANNUM representing the Liquor Licence Board

DECISION: DECEMBER 12, 1980

Figures placed before the Tribunal by the Licensee taken from ledger sheets reflecting the true operation of the business show that the total receipts from the sale of liquor have far exceeded the total receipts from the sale of food in the same month.

The Tribunal finds on the evidence that with respect to the sale and service of food, there are full kitchen facilities, an adequate supply of food and adequate provision of service. However, there has been insufficient demand and therefore insufficient receipts from the sale of food. The operation is satisfactory from a health and policing point of view.

The licensee has admitted that the figures he submitted to the Board which show a ratio of food receipts in excess of or close to those of liquor receipts are incorrect. Though the licensee has been very forthright in his testimony before the Tribunal, there is no justification for his earlier action.

The Tribunal finds that the licensee is in breach of Section 6 (5) of Regulation 1008/75 under The Liquor Licence Act.

By virtue of the authority vested in it under The Liquor Licence Act, 1975, the Tribunal confirms the decision of the Liquor Licence Board herein.

At the conclusion of the hearing, the Chairman orally gave the decision and reasons therefor in the presence of the two members who concurred.

MUCKLES TAVERN, Toronto

Dining Lounge Licence
Issued to
S. Muckle and Associates Limited
Appeal from decision to revoke Muckles
Tavern

MEETING TO CONSIDER request for
extension of time for the giving
of notice requiring a hearing by
the Tribunal, and request for a
stay of the Board's Order of
revocation.

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
GORDON PURVIS, Q.C., VICE-CHAIRMAN
KENNETH VAN HAMME, MEMBER

COUNSEL: MICHAEL LAWS, representing the Applicant Licensee
S.A. GRANNUM, representing the Liquor Licence Board

DECISION: OCTOBER 6, 1980

At the conclusion of the Meeting, in the presence of the
two members, the Chairman gave an oral decision:

The first issue before the Tribunal is whether the request
for an extension of time for notice requiring a hearing should be
granted by the Tribunal.

The relevant sections of the Statute are 15(1) and 16(8).

There is a requirement of a two-fold determination. The
first determination is whether the Tribunal "is satisfied that
there are prima facie grounds for granting relief." In this
regard it is admitted that there are substantial monies owing by
a Licensee, namely Sales Tax collected which are trust funds.
Those monies cannot be paid by the Licensee. Accordingly, the
Licensee would be disentitled to a licence in accordance with
Section 6(1) (c) (i) of the Act - in that "having regard to its
financial position, it cannot reasonably be expected to be
financially responsible in the conduct of its business". There
is therefore a reason for revocation. No evidence has been
placed before the Tribunal to-day that the Applicant licensee is
in a position to meet all its obligations.

Although only one of the two matters can be the basis of
the Tribunal's decision, the second determination is whether
"there are reasonable grounds for applying for the extension".

A substantial period of time has passed. During that period the applicant/licensee has not taken steps that would indicate to the Tribunal that there are reasonable grounds. There has been a failure to file returns long overdue; there has been no positive attempt at reducing the substantial arrears existing prior to the immediate notice of proposal; there has been no placing before the Ministry of Revenue of proposals; there has been no payment of the most immediate payment due.

The Tribunal is not satisfied that there are prima facie grounds for granting relief, and the Tribunal is not satisfied that there are reasonable grounds for applying for the extension. Accordingly, the Tribunal does not extend the time for giving the notice requiring a hearing.

It is not necessary accordingly for the Tribunal to deal with the issue of the request for a Stay.

The decision of the Tribunal in this matter is that the time for Notice requesting a Hearing not be extended.

NEVADA RESTAURANT

Dining Lounge Licence
 issued to
 George Meanchopoulos (Meanchos),
 Chris Meanchopoulos and Bill Meanchopoulos
 APPEAL FROM ISSUANCE OF LICENCE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
 KENNETH P. VAN HAMME
 BARBARA J. SHAND, MEMBERS

COUNSEL: MORRIS J. WINER, representing the City of Toronto
 ARTHUR MALONEY, Q.C. representing the Licensee
 S.A. GRANNUM, representing the Liquor Licence Board

DECISION: DECEMBER 23, 1980

In the Liquor Licence Act, Section 6 (1), the Legislature has set forth for guidance of the Board, the criteria by which licences are to be issued. An applicant for a licence is entitled to be issued the licence except where it comes within certain exceptions.

In the instant application, it is clear that the exception to be considered is that set out in paragraph (g) namely, "in the case of an application for a licence, the issuance of the licence is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located." That is the issue before the Tribunal today; it is really the basis of the requirement for the hearing on behalf of the City of Toronto.

Mr. Winer, counsel for the City of Toronto, has very thoroughly reviewed the cases which have come before the Tribunal in which it was called upon both to interpret and to apply that section. Each application for a licence is to be dealt with on its own circumstances and on its own merit. To arrive at a determination of the public interest, the Tribunal has to assess needs and wishes, and come to a conclusion on the balance of the expression which is placed before it. The Tribunal has, as has the Board, relied on letters, petitions, on the testimony of individuals on behalf of themselves, or as representatives of groups, of elected representatives, and on resolutions of council, both in support of and in opposition of application. That is the manner in which the evidence was placed before the Tribunal today.

There is in this instance with respect to the resolution of council, a significant difference as compared to resolutions heretofore placed before the Tribunal in that in November of 1978, the Council of the City of Toronto passed a motion "1 that no further liquor licences be granted to establishments on both sides of Queen Street East from Woodbine Avenue to Victoria Park Avenue. 2. That the Commissioner of Planning be requested to report on the impact of licensed dining establishments on the local community for the Queen Street East area from Woodbine Avenue to Victoria Park Avenue..."

In the past, the resolution has generally been directed to the specific application. It is a significant factor, but a factor that is one of several that may come before the Tribunal in its determination. The opposition to the application is basically based on concerns of residents of the immediate area with respect to parking and to what can be summed up as noise and rowdiness. Evidence has been placed before the Tribunal that other residents do not view these as problems, and it has been submitted by counsel for the respondent that in any event such problems will not be increased by the issuance of a licence. The significance of the concerns expressed by the residents, as the Tribunal has tried to convey in its interpretation, is as an indication to the Tribunal that the expression of needs and wishes by those in opposition are bona fide; that is, that they are based on a position in respect of which those that are in opposition hold strongly, and that the expression of needs and wishes are not based on some whim or ulterior motive, vis a vis the applicant.

The Tribunal accepts the position of those who have expressed their opposition that their needs and wishes are that a licence not be issued.

In support of the application, there is a petition of some 760 names somewhat different from petitions which have heretofore been placed before the Tribunal. It is a petition signed by patrons of the establishment whereby it is clear that a very substantial number, close to 75%, are drawn from the residential community which the strip (in the language of the residents) is called upon to serve. Those patrons are basically within walking distance of the establishment. In this instance, the determination before the Tribunal is to arrive at a conclusion based on the balance of the needs and wishes of those residents served by the strip who are in opposition, with the needs and wishes of those residents who wish to be served by Nevada Restaurant. Each group is made up of members of the public within the municipality.

Mr. Winer has pointed out that it is very clear, that the number of licenced establishments within the strip is large and significant for the relatively short distance within which they are found. Mr. Winer has submitted on behalf of the appellant that the needs of the residents of the area can be satisfied by patronising one of the presently established licensed premises. And technically that is a fact. However, there is something more. The patrons of Nevada, a substantial number of whom attended to give evidence to the Tribunal, have indicated a rather unique loyalty to a restaurant. They have testified as the Tribunal finds, that the restaurant is what is known colloquially as a 'family restaurant' operated by a family, for families. The service is excellent, the food is good. There is a relationship established through many years between the operators and patrons who have resorted to them for service and enjoyment. The amenity of a drink at another, even neighbouring establishment, would have to be at the sacrifice, the giving up of the service and enjoyment of the rapport which those patrons have enjoyed for many years at Nevada.

Mr. Winer has referred amongst other decisions, to that of Pros Restaurant. What both counsel are unaware of is that since the first Pros Restaurant case was reported, there was a second application as yet unpublished in which Pros Restaurant upon the new application and upon the evidence that was placed before the Tribunal at that time was issued a licence. And it is interesting to note that in the case of Shangrila Restaurant, in Peterborough, changed circumstances in that community have brought about a licencing of that establishment.

The Tribunal stresses that it is dealing with the specific application of Nevada Restaurant. It is in no way passing judgment on the concerns expressed in letters, petitions and in the testimony of the Aldermen and in particular on the resolution of council, all of which have validity. What the Tribunal is called upon to do is to determine whether this applicant's entitlement to a licence comes within the exception as not being in the public interest having regard to the needs and wishes of the public in the municipality in which the premises are located. In this instance, those who have made an expression of opinion are basically from within the area to be served by the strip. The Tribunal is of the opinion that on balance the needs and wishes of those who have given support to the issuance of the licence outweigh the needs and wishes of those who have expressed their opposition, based upon the fact of the rather unique situation of the service which Nevada Restaurant has been giving to the area primarily concerned. The Tribunal is of the opinion that with respect to this particular application, the onus that falls upon the appellant has not been discharged.

The Tribunal confirms the decision of the Board.

At the conclusion of the hearing, the Chairman orally gave the decision and the reasons therefor in the presence of the two Members who concurred.

OSCAR'S ON-THE-BAY RESTAURANT

Dining Lounge Licence
To be issued to Trevor Howes
NATURAL GOURMET (BARRIE) LIMITED
APPEAL FROM PROPOSAL TO REFUSE TO ISSUE

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE-CHAIRMAN
as CHAIRMAN
BARBARA J. SHAND and
KENNETH VAN HAMME, Members

COUNSEL: JOHN A.B. MAC DONALD, representing the Applicant
BRUCE J. BIGELOW, representing the Objectors
S.A. GRANNUM, representing the Liquor Licence Board

DECISION: NOVEMBER 13, 1980

Natural Gourmet (Barrie) Limited through Mr. Trevor Howes, is the Applicant for a proposed Dining Lounge Licence to be issued in respect of the establishment classified as a Restaurant known as Oscar's On-The-Bay Restaurant, 204 Whiteoaks Road, Minet's Point, Ontario. The officers and directors of the Applicant Corporation are:

Trevor Howes - President
Susan Howes - Secretary
J.T. Saso - Director
D.F. Ralph - Director

The proposed licensed premises are located in a 2-storey building owned by the Applicant and will consist of three rooms having seating capacities of 60, 30 and 20 persons respectively.

The fact of the Application was published in the Barrie Examiner on May 21st and May 28th, 1980, and a public meeting was held on June 24th, 1980. Prior to this meeting there was filed with the Board, letters from residents objecting to the issuance of the liquor licence. At the said public meeting, several residents also spoke in opposition to the issuance of the Liquor Licence to the Applicant.

As a result of the above objections, the Liquor Licence Board proposed to refuse to issue a Liquor Licence to the Applicant because it would not be in the public interest, having regard to the needs and wishes of the public in the municipality.

Immediately prior to its Hearing, the Tribunal was advised that an Agreement had been reached between Counsel for the Applicant and Counsel for the Objectors to the issuance of a Licence, said Agreement being dated October 23rd, 1980, in which

Counsel for the Objectors agreed to withdraw all of the objections to the granting of the Liquor Licence requested by the Applicant and agreed to speak in support of the Application on the following conditions:

1. The Applicant, Natural Gourmet (Barrie) Limited agrees that it will not apply for any type of a patio licence for the property while it holds title to the said property.
2. The hours of sale of alcoholic beverages in the establishment shall be 12:00 noon to 10:00 p.m. Monday to Sunday inclusive and the Applicant shall not apply for extensions of its hours of sale of alcoholic beverages until October 23rd, 1981, except that it may apply at any time for an extension of its hours for sale of alcoholic beverages to 12:00 p.m. upon special occasions, and for the entire period from November 15th to January 15th.

Counsel for the Applicant submitted in argument the fact that Section 6 of the Liquor Licence Act reads at the outset as follows:

"An Applicant for a Licence is entitled to be issued a Licence..."

and then the Section goes on further to outline certain items of compliance. Subsection (g) of that Section 6, reads as follows:

"In case of an Application for a Licence, the issuance of the Licence is not in the public interest having regards to the needs and wishes of the public in the municipality in which the premises is located".

By the completion by the Applicant of the aforementioned Agreement, Counsel submitted that the needs and wishes of the public in the Municipality had been satisfied.

The Tribunal accepts the submission of Counsel for the Applicant that the Act does entitle an Applicant to a Licence subject to the conditions contained in this Section and the pertinent sections of the Regulations. The Applicant through Counsel has given Undertakings as to proper compliance with subsection (f) of Section 6(1) of the Act. Therefore, in accordance with Section 15(3) of the Liquor Licence Act, the Liquor Licence Appeal Tribunal hereby directs the Liquor Licence Board to process the present Application on or before the 24th day of November, 1980, and, provided that all requirements of the Act and

Regulations are met, to forthwith issue a Licence to the Applicant subject to the following conditions:

1. The Applicant agrees that it will not apply for any type of a patio Licence for the premises while it holds title to the property.
2. The hours of sale of alcoholic beverages shall be 12:00 noon to 10:00 p.m. Monday to Sunday inclusive, and the Applicant shall not apply for extensions of its hours of sale of alcoholic beverages until October 23rd, 1981, except that it may apply at any time for an extension of its hours for sale of alcoholic beverages to 12:00 noon upon special occasions, and for the entire period from November 15th to January 15th.

PARAGON RESTAURANT, Owen Sound

Approval for issuance of a Dining Lounge Licence
to
Keukenhof Limited
APPEAL FROM APPROVAL FOR ISSUANCE

TRIBUNAL: JOHN W. ERICKSON, Q.C., VICE-CHAIRMAN as CHAIRMAN
KENNETH PETER VAN HAMME and
BARBARA J. SHAND, MEMBERS

COUNSEL: D. CRANE representing residents of Owen Sound,
E.A. GOODMAN representing the applicant
S.A. GRANNUM representing The Liquor Licence Board

DECISION: OCTOBER 6, 1980

This was a hearing held on June 4th, 1980 pursuant to Section 15 of the Liquor Licence Act, 1975 before the Liquor Licence Appeal Tribunal sitting at Owen Sound.

The reference above indicates that this Appeal was instituted by certain residents of the City of Owen Sound (hereinafter called "Objectors") who oppose the issuance of a licence to the Paragon Restaurant operated by Keukenhof Limited (hereinafter called the "Applicant").

There was obvious interest shown in this appeal in the community of Owen Sound as evidenced by the large number of residents who attended the hearing held by the Tribunal on June 4th, 1980 in the Owen Sound Council Chambers. The history of proceedings leading to this appeal by the residents is useful as a starting point.

Pursuant to an application dated the 18th day of June, 1979 and filed with the Liquor Licence Board of Ontario, the Applicant applied for a Dining Lounge Licence and a Patio Licence. In that application the Applicant specified its weekly hours of operation as:-

Tuesday to Friday - 12.00 noon to 9.00 p.m.

Saturday - 5.00 p.m. to 10.00 p.m.

The capacity of the dining room was stated to be 50 seats while the patio licence was stated to be 20 seats.

The Board published notice of a public meeting in the Owen Sound Times in accordance with the terms and provisions of the Liquor Licence Act and the said meeting was held in Barrie, Ontario on August 28th, 1979. It appears that certain residents of the community of Owen Sound appeared at the meeting in Barrie and objected to the issuance of the licence to the Applicant.

On the basis of those objections the Board did not grant the licence but instead proposed to refuse the issuance of the licence to the Applicant pursuant to a Notice of Proposal dated September 19th, 1979. It is useful to set out the reasons contained in the aforesaid Notice of Proposal because most of the facts contained therein are not in dispute. The Notice of Proposal was as follows:-

"1. The applicant is a corporation and by application dated June 18th, 1979, applied for a dining lounge and patio - dining lounge licence for premises to be known as the Paragon Restaurant, Owen Sound.

2. The officers and shareholders of the corporation are: Wilhelmus Leonardus VAN VELDEN and Wilhelmina Fredericka VAN VELDEN

3. The premises in respect of which the application for liquor licence is made is situate in a one-storey structure and has been used for the sale and service of food for many years.

4. The applicants purchased the property in 1973 and continued to use the front and rear rooms for the sale and service of food and also for the sale and service of liquor under Special Occasion Permits. In 1974 in order to comply with local health regulations, it was necessary to close the rear room but the use of the front room was continued for the sale and service of food and the sale and service of liquor under the authority of Special Occasion Permits.

5. The applicants intend to make necessary alterations and additions so that it may be eligible for the sale and service of food and liquor to the public as a restaurant and to continue the use of the front room as a banquet hall for the sale and service of meals and liquor under the authority of Special Occasion Permits.

6. During 1978, 69 Special Occasion Permits were issued by the Board for functions to be held on the premises. Of these, 12 were wedding receptions, 23 were other receptions and 34 were social events.

7. The subject premises is zoned residential but constitutes a lawful non-conforming use.

8. The capacity of the proposed premises will be 115 and 72 persons respectively or a combined total of 187 persons.

9. The proposed hours of operation of the rooms will be Tuesday to Friday - 12.00 noon to 9.00 p.m., Saturday - 5.00 p.m. to 10.00 p.m. and Sunday - 1.00 p.m. to 7.00 p.m. However, the applicants advise that no liquor will be sold or served on Sunday and the premises will be closed on Monday.

10. The officers of the applicant corporation reside in a house that is approximately eight feet to the north of the subject premises and the next dwelling is located approximately 75 feet from the subject premises.

11. To the south of the subject premises is a public park.

12. The fact of the application was published in the Owen Sound Sun Times on July 25th and August 1st, 1979 and a public meeting was held in Barrie on August 28th, 1979 for the purpose of hearing representations from the public.

13. At the said public meeting, several persons appeared and spoke in opposition to the issuance of a liquor licence to the applicant and prior thereto, there had been filed with the Board several letters from persons objecting to the issuance of the licence and a petition signed by residents of the area who also opposed the issuance of the licence. Copies of the said letters and petition had previously been forwarded to the applicant.

14. Pursuant to Section 6(1)(g) of The Liquor Licence Act, the issuance of the licence is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located."

On September 26th, 1979 the Applicant through its solicitor requested a hearing by the Board and the hearing was held on November 8th, 1979. A review of the Secretary's minutes of the hearing before the Board indicates that the major concerns of the Objectors were placed before the Board although it is difficult to determine whether or not the same detail was presented to the Board as was the case before the Tribunal at this hearing. In any event, a summary of the concerns of the citizens is expressed at page 8 of the Secretary's notes as follows:

"The Members of the community in opposition to this Application were then invited to voice their opinions. The major concern of the residents who spoke at this Meeting was with respect to changing the residential area in which they live to a commercial area."

The Board rendered its decision on December 5th, 1979 and found as follows:

"Further to this application, it is the opinion of the Board that matters relevant to parking are matters within the jurisdiction of the municipality. The other aspects of the establishment that have been considered by the Committee of Adjustment or the Ontario Municipal Board are matters within those jurisdictions and are not within the jurisdiction of the Liquor Licence Board of Ontario.

After further consideration of all the evidence presented to the Board, the decision is that the Board "APPROVES" the application for a "DINING LOUNGE" licence only, in respect of the Paragon Restaurant, with the following "TERMS AND CONDITIONS":

1. The proposed hours of operation of the Dining Lounge insofar as the sale and service of alcoholic beverages is concerned shall be: Tuesday to Friday 12.00 noon to 9.00 p.m.; Saturday, 5.00 p.m. to 10.00 p.m.; Sunday, 1.00 p.m. to 7.00 p.m., and the premises will be closed on Monday.

2. In the event that applications are made for Special Occasion Permits for functions to be held in the unlicensed Banquet Room situate in these premises, the sale and service of alcoholic beverages shall cease no later than 12.00 midnight.

3. No entertainment will be provided in the licensed premises without the prior approval of the Board.

If, at any time in the future, an application to vary these terms and conditions, or any one of them, is made by the applicant or by any subsequent licence holder, a public meeting will be convened within the City of Owen Sound so that the residents of the municipality may be afforded an opportunity to make presentations to the Board for or against such request.

With respect to the application for a Patio (Dining Lounge) licence, the Board denies the issuance of a Patio (Dining Lounge) licence.

DATED at TORONTO this 5th day of DECEMBER, 1979."

It appears to the Tribunal that the Board was of the view that the concerns of the Objectors were matters whose resolution came within the jurisdiction of other municipal bodies and were not relevant to the issuance of a liquor licence under

the Act. The Objectors appealed the Decision of the Board to this Tribunal.

It is stating the obvious that many witnesses were called and numerous exhibits filed at the hearing including petitions containing the names of many Owen Sound residents. Additionally, Counsel for the Applicant and the Objectors made their submissions orally and filed written submissions at a later date with the Tribunal. The Tribunal gratefully acknowledges the assistance of Mr. Goodman and Mr. Crane in developing the issues fully through the evidence which was called at the hearing and in their submissions.

Prior to summarizing the lengthy testimony that was heard by the Tribunal, two matters which were raised by the evidence and in argument ought to be addressed:

1. The arguments relating to the Paragon Restaurant as a legal non-conforming use; and
2. The effect of a Resolution of the Council for the City of Owen Sound.

The Tribunal after a careful review of the evidence is of the opinion that the Applicant has at all times conducted itself in a lawful manner and not in an "illegal" manner as suggested by some of the Objectors. There is no credible evidence before the Tribunal which indicates that the Applicant should be prejudiced at this hearing by any past dealings with the Objectors or the Committee of Adjustments for the City of Owen Sound and the Tribunal has proceeded in its deliberations on that basis.

Further, much time was spent by Counsel for the Objectors attempting to satisfy the Tribunal as to the force and effect of the Resolution of Council for the City of Owen Sound dated March 4th, 1980. It is noteworthy that this Resolution was passed after the hearing before the Liquor Licence Board of Ontario. The Tribunal has held in the past that the opinion of a City Council as expressed in a Resolution is to be afforded sufficient weight but that it is only one factor to be taken into account. Further, the Tribunal has in the past inquired into the circumstances surrounding the passing of such a Resolution to determine if both sides of the argument, that is the Objectors and the Applicant, were present or if the Resolution simply manifests the result of an effective mobilization of public opinion without affording the party most affected by the resolution the right to a fair hearing. In this appeal, it is clear Mr. Van Velden, the President of the Applicant, or his agent was

not invited to participate in the Council meeting at which the Resolution was passed and further, to put it more bluntly, was not given notice of the fact that such a Resolution was to be placed before Council. Additionally, the Resolution of Council by its very terms is vague and evades an expression of direct support for the Objectors but instead supports the views of the City Planning Department which the Tribunal does not consider earth shattering. As a result, therefore, the Tribunal has taken notice of the Resolution but feels its weight is questionable in assisting the Tribunal in arriving at its decision.

It is also noteworthy as a preliminary comment that it is clear there is no issue before the Tribunal as to the Character of the Applicant's President, Mr. Van Velden or for that matter Mrs. Van Velden or their ability to effectively manage and supervise a licensed dining lounge were the application to be granted. It is clear to the Tribunal that Mr. and Mrs. Van Velden are people who have created a successful commercial endeavour in the City of Owen Sound through the application of their own energies and productivity. Further, they have taken the profits from their commercial enterprise and have improved the premises which are the subject matter of this dispute in appearance by making a substantial investment in the building and constructing their own private residence next to their successful business operation. The evidence is clear that they have made a commitment to the neighbourhood in money, time and effort. Any suggestion to the contrary has been rejected out of hand by the Tribunal. Further, although there was some evidence lead by the Objectors as to a dispute between Mr. Bevan Loughheed and Mr. Van Velden the Tribunal does not feel that this evidence should have any influence on its decision.

In order to appreciate the evidence which was given at the hearing, the background of the present establishment owned by the Applicant should be looked at. Mr. James Irvin Brown who lives near the Paragon Restaurant testified that prior to the present Applicant's purchase of the premises numerous owners had attempted to make a success of the operation - without much success. At one time there was a proposal for a major development including an hotel however it did not come to fruition. It is clear that there was a commercial establishment on the site of the present Paragon Restaurant for many years and that the Applicant purchased the premises in the year 1973. Following the purchase the Applicant spent time, money and effort to improve the premises. In 1974 the Applicant was required to make renovations to the premises in order to comply with local health regulations and also to comply with The Liquor Licence Act so that it would be eligible to receive Special Occasion Permits. These renovations were completed and the premises appear to have been operated very successfully thereafter by Mr. and Mrs. Van Velden.

In the beginning, Mr. and Mrs. Van Velden actually lived in the premises which form the establishment known as the Paragon Restaurant. It is clear that they converted part of the premises for that purpose. Later, they applied to sever a piece of the land which formed the property upon which the Paragon Restaurant was situated and once the severance was granted they constructed a residence for their own private purposes. The evidence also indicates that following the construction of this residence the living quarters within the Paragon Restaurant were then converted back to use as a restaurant.

At the hearing, maps showing the location of the Paragon Restaurant were introduced as exhibits together with numerous photographs which showed the residential character of the neighbourhood. The Tribunal is grateful to the parties involved in this appeal for their generous assistance in providing this material since it did allow the Tribunal the opportunity to view the neighbourhood as it exists. The photographs also revealed that the Applicant had made attempts to improve the appearance of the Paragon including exterior improvements and landscaping.

The Objectors called Daniel O'Connell and W.J. Radburn ostensibly for the purpose of providing evidence to show that properties in the area of the Paragon Restaurant would be affected by diminution in value if the licence which is the subject matter of this appeal issues. The two witnesses were not qualified as experts by the Objectors and the best that can be said for their evidence is that they testified in an honest and forthright manner but having said that, there is no foundation for the suggestion that their evidence ought to be accepted or given more weight than any of the other evidence called. It may simply be stated by the Tribunal that Mr. O'Connell and Mr. Radburn expressed an opinion as the result of a request by some of the Objectors. Their evidence cannot be considered useful because of its apparent lack of objectivity and accordingly little weight is to be given to it when dealing with the evidence of the Objectors in the issue of diminution of the value of the property.

James Irvin Brown, Bevan Lougheed, Jennifer Watson, Robert Lutz, Don Robinson, Mildred Merkley, Marjorie Sinclair, Constance Sinclair and Gordon McCaffrey are residents of the neighbourhood in which the Paragon Restaurant is located. The cumulative effect of their evidence is that over a period of time they have felt or indeed experienced an erosion of their lifestyle and an invasion of their privacy. They explained how motor vehicle traffic has increased dramatically because of the increased business at the Paragon Restaurant. This in turn has lead to congestion on Second Avenue East and resultant noise. They indicated they felt betrayed in that their homes which are set in

a parklike setting had lost some character and quality because of the Van Velden's success with the Paragon Restaurant. An attempt was made by the Applicant to characterize their evidence in one or both of the following ways:

1. That the excesses complained of were exaggerated and not nearly as serious as the picture portrayed by the residents; and/or

2. That the problems complained of already existed and that they would not increase in severity or degree, in other words, the status quo would be maintained even if the licence were granted.

The Tribunal is of the view that cross-examination of the witnesses revealed some excesses in the evidence of the Objectors. For example, Bevan Lougheed who lives virtually next door to the Paragon Restaurant had little evidence to offer on the issue of noise emanating from the premises and one would have thought that he would be the person in the best position to judge the noise levels. Instead, the main evidence with respect to noise came from those who live much further from the Paragon Restaurant. One is left with the impression that their evidence is perhaps exaggerated to an extent.

Bevan Lougheed also gave evidence as to the character of the neighbourhood and his assessment of its future potential. He stated that he would be prepared to build a new residence if the status quo of the area is maintained. The Tribunal found this evidence to be somewhat inconsistent with the position of the other Objectors since it is reasonable to conclude that if the problems are as acute as some of the Objectors seem to feel they are then one would hardly be expected to make a substantial investment in a residence when the thrust of the evidence is that property values are declining.

All of the Objectors who testified talked of the parking problems on Second Street East and gave examples of the congestion that results when larger functions are held at the Paragon Restaurant. The Tribunal is compelled to think that this existing parking problem will not be alleviated by the refusal to issue a licence. It is a problem which will continue no matter what the Tribunal decides.

Steven Hyndman, a Member of the Owen Sound Planning Department, was called as a witness on behalf of the Objectors. He gave evidence that the Paragon Restaurant is located in a residential zone and that it is a legal non-conforming use. He testified that the Planning Department of the City of Owen Sound no longer supported a conversion of another lot facing the

restaurant into a parking lot for patrons of the Paragon Restaurant. This lot is owned by Mr. Van Velden. It was clear from the cross-examination of Mr. Hyndman that the Planning Department is of the view that there has been some improvement of the character of the neighbourhood over the past few years and by inference it would appear that the Paragon Restaurant has contributed to that improvement. Mr. Hyndman's explanation as to why the Planning Department would not approve the additional parking on the lot owned by Mr. Van Velden would appear to stem from his belief that a licensed dining lounge is an incompatible use within a residential zone. It also appears to be his view and a view fairly held that any expansion of the present restaurant premises or business would only lead to a deterioration of what has been accomplished in the neighbourhood. Mr. Hyndman appears to take as his premise the fact that the issuance of a dining lounge licence for the sale of liquor in the premises would lead to expansion of the business.

Irvine Walter Reddick, William Donald Leacock, Mrs. McTavish, Barbara McPhaden, Councilwoman Midge, Mayor Bob Rutherford, Edward J. Levy and the President of the Applicant Mr. Van Velden gave evidence on behalf of the Applicant.

Mr. Crane on behalf of the Objectors in his submissions attempted to cast doubt on the motivation of some of these individuals and their testimony. The Tribunal is of the view that his suggestions are without foundation and that these witnesses gave evidence in an honest and forthright manner and in the belief that a licence would not only benefit Mr. Van Velden whom they admire but also would be a benefit to the citizens of the City of Owen Sound since they would be able to enjoy a drink with the fine food one can usually expect at the Paragon Restaurant. It is also clear, however, that those who supported the Applicant in testimony or by signing the petition filed on behalf of the Applicant do not reside in close proximity to the Paragon Restaurant.

Mayor Bob Rutherford of Owen Sound gave evidence in support of the application and told of his attempts to alleviate the parking problems. He felt the granting of the licence would not only assist Mr. Van Velden but also provide the citizens of Owen Sound and tourists with a first class dining establishment. Mayor Rutherford expressed his views about the Council Resolution referred to earlier and said that no notice of the Resolution was given in advance. He did admit that no attempts had been made to rescind the Resolution. It is noteworthy that although the Objectors have argued weight should be accorded the Council Resolution the only elected officials who gave evidence at the hearing and who elected to attend in person were those who attended on behalf of the Applicant.

Mr. Van Velden gave evidence for the Applicant and outlined his experience in the restaurant business which is impressive. He impressed the Tribunal as a businessman who has succeeded by his diligence and hard work. He gave his views of the complaints of the Objectors and seemed generally surprised by some of them. The Tribunal is of the view that if it can be said that the Objectors in some cases have exaggerated the problems then Mr. Van Velden for his part has tended to minimize the problems.

Mr. Van Velden was unaware that the extra lot he owns had to be re-zoned for parking for his business customers. He states that he was always of the view the lot fell into the category of a legal non-conforming use much like the restaurant. Mr. Van Velden did not refuse to consider other parking areas on his property but on the other hand did not appear to volunteer to take any active steps to satisfy the residents. The Tribunal hastens to add that he is not and was not required to do so. Mr. Van Velden appears to cling closely to basic concepts of an individual's right to the enjoyment of his property and is not prepared to make concessions to the residents unless it is absolutely necessary.

The final witness called by the Applicant was Edward J. Levy of Barton-Aschman Canada Limited, a firm which conducted a traffic impact study on behalf of the Applicant. Mr. Levy as a result of studies conducted in Owen Sound on Second Avenue East was of the view that the increase in vehicle traffic to the Paragon Restaurant as the result of the issuance of a licence would be minimal at best and would not exacerbate the present parking or noise problems. This was a further attempt by the Applicant to lead evidence to show that the status quo would be maintained even if the licence was in fact granted.

In addition to the witnesses called by the Objectors and the Applicant, numerous letters and petitions were filed for and against the issuance of the licence. If one were to simply resolve the issue on the sheer bulk of the material filed, then the Objectors would be the clear winners without anything more having to be said. The Tribunal, while it feels there is some weight that should be accorded to a petition of concerned citizens, also feels that mere numbers are not decisive since it is impossible to determine the reason for attaching one's signature to a petition. This would also provide encouragement to those in favour of or opposed to the issuance of a licence to simply mobilize public support in the form of petitions if that were all that was required for success. The Tribunal has taken the position in the past and continues to be of the view that more is needed.

Some argument was directed to the Tribunal with respect to the onus on the parties at this appeal. Mr. Crane on behalf of the ratepayers sought to treat this matter much like an appeal to the Court of Appeal. The Tribunal is of the view that Section 15 of The Liquor Licence Act contemplates a hearing de novo. The Tribunal is further of the view that in dealing with Section 6(1)(g) of the Act that the onus is on those who oppose the issuance of a licence to show on a balance of probabilities that the granting of the licence is not in the public interest within the meaning of Section 6(1)(g).

Much of the evidence which was called by the Objectors and the Applicant dealt with four major concerns:

- (1) Noise;
- (2) Traffic;
- (3) Parking; and
- (4) Property values.

It is clear that (4) above would be the result of the previous three. The thrust of the evidence lead by the Applicant was that there would not be an exacerbation of these problems such as they are now. Mr. Levy who was called by the Applicant as indicated earlier did indicate that the increase of traffic, or put more precisely the number of cars coming to the Paragon Restaurant, would be minimal. We do not doubt the veracity of the opinion expressed at the hearing by Edward J. Levy based on the information gathered in a one day study in Owen Sound and other data. However, one can not help but be impressed by the fact that Mr. Van Velden has created his restaurant and fully intends to make a success of the same. In order to make it a success he must substantially increase the number of patrons frequenting the establishment. If Mr. Van Velden is successful then Mr. Levy's opinion would appear to be in doubt and in all likelihood there would be a substantial increase in patrons using the Paragon Restaurant.

The evidence of the Applicant also sought to minimize the impact of the restaurant in the middle of this residential area. The Tribunal finds no difficulty in accepting the proposition that some of the views voiced at the hearing by the residents living in close proximity to the Paragon Restaurant were subjective and perhaps embellished to some extent. However, it is clear that the views of these residents were honestly held and, if one could express a collective overview, there is a genuine belief by these residents that their lifestyle has been eroded and further erosion can be expected as Mr. Van Velden continues to expand his successful business.

The issue that faces the Tribunal is, therefore, whether it should deal with this matter on the basis that the status quo apparently will be maintained which would result in little weight being given to the evidence of the residents or, put another way, whether the test to be applied should be objective and impersonal. After serious consideration the Tribunal feels that this is not the proper test and refers the parties to its previous decisions for the principles to be applied in this type of situation.

In the matter of the Donwood Restaurant, a decision which is found in Volume 3 of the Summaries of Decisions of the Liquor Licence Appeal Tribunal, page 53, the Tribunal said as follows:

"The Section refers only to a regard to needs and wishes. The Tribunal has accepted the position that that expression need only be bona fide. The concerns of the Ratepayers Association in this instance, have more to do with concerns as to what might occur in the future than with what is the present situation. Indeed, the Plaza and the attendance of persons, and the operation of the restaurant do not indicate that there is any real problem at the present time. However, the Ratepayers base their views and concerns on problems which they consider real and which they consider to be emanating from another licensed establishment. The Tribunal accepts those concerns as being real and the expression of needs and wishes to be bona fide."

Further in the decision of Pros Restaurant, a decision located in Volume 2 of the Summaries of Decisions of the Liquor Licence Appeal Tribunal, page 155, the Tribunal in dealing with a similar issue said as follows:

"The legislation provides that public interest must be determined in the light of 2 aspects. Firstly, regard must be had to both "needs" and "wishes"; consideration and weight must be given to both factors. Secondly, these 2 aspects must be examined in the context of the public of the municipality in which the premises are situate, not in the context of just the particular public resident in the vicinity where the premises are physically situate. Consideration can not be restricted to that of "needs" alone or "wishes" alone, nor to either of these matters from the point of view of one particular group. However, the Tribunal is of the opinion that in determining wishes different weight must be given to points of view in the light of all the circumstances. For example, the views of those of the immediate neighbourhood as to the effects, and accordingly their needs and wishes are more significant because they are most directly affected by the physical presence of the licensed establishment."

When one reviews the previous decisions of the Tribunal one can clearly discern that the Liquor Licence Appeal Tribunal is of the opinion that the intention of the Legislature is clearly expressed in the wording of Section 6(1)(g) which reads as follows:

"(g) in the case of an application for a licence, the issuance of the licence is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located."

It is not necessary to go beyond the words in the statute and use an Aladdin's lamp to shed light in the dark corners of the legislative mind. The Legislature has allowed the people of a community the final say so long as the needs and wishes expressed by the citizens are bona fide. If the needs and wishes as expressed by the citizens are bona fide then it is the Tribunal's opinion that the licence ought to be refused if the weight of the evidence is sufficient to satisfy the onus.

Further, unless the evidence establishes that the needs and wishes of those in opposition to the granting of a licence would be satisfied by the imposition of restrictions on the licence applied for, the Tribunal is of the view that it has no jurisdiction to act as an arbitrator between the Applicant and the Objectors involved to solve the disputes. The matter must be resolved one way or the other on the basis of the evidence before it.

The Tribunal has come to the conclusion that the concerns of the residents of the City of Owen Sound who opposed the granting of the licence applied for by this Applicant are bona fide. The Tribunal is further of the view that their needs and wishes have clearly voiced the view that the public interest opposes the issuance of the licence sought by this Applicant. The Tribunal concludes that the weight of this evidence is such that the onus on the Objectors who opposed the granting of the licence has been satisfied and the licence should not issue.

The Tribunal, therefore, revokes the decision of The Liquor Licence Board dated December 5th, 1979 and directs The Liquor Licence Board to refuse to issue the licence applied for by the Applicant.

PROS RESTAURANT, Scarborough

Application for Dining Lounge Licence
by Vasilios (William) Ouzounis
APPEAL FROM DECISION TO ISSUE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
GORDON PURVIS, Q.C., VICE-CHAIRMAN
JACK C. SIM, Member

COUNSEL: P. SCHRIEDER representing the Applicant
S.A. GRANNUM representing the Liquor Licence Board

AGENT: LUBA FRASER appellant on behalf of herself and
others

DECISION: JULY 9, 1980

Vasilios (William) Ouzounis, the applicant has been the sole proprietor of the restaurant business known as Pros Restaurant at 1591 Ellesmere Road in the Borough of Scarborough since about June, 1976 when he purchased the business, having been employed there for about a year previously. He is assisted by his son and the operation can be described as a family undertaking.

The restaurant is a typical one. It has one dining room with a seating capacity of 64 persons; there is both counter and table service with a regular menu and average price of \$2.75. A large outdoor sign indicates Restaurant dining. The sign replaced earlier signs stating, "Fish & Chips, Fast Take-Out Orders, Charcoal Broiled Burgers, Breakfast Specials 6-11 a.m." No entertainment is provided. The value of the operation is \$120,000, of which \$70,000 is an investment by the proprietor and the balance is owed.

The restaurant is situated in a typical business block known as Progress Plaza which can be described as a small community plaza in existence since the early 1960's, at which time the restaurant was established. In the plaza there are nine other businesses including a bank, a bakery, a milk store, a hardware store, a smoke and gift shop, a sports shop, a beauty salon and a rent-all shop, all generally serving the neighbourhood as well as transient trade. There are also some seven offices. Only three operations including the restaurant are open after 6 p.m. There are about 55 parking spaces at the front and side and 18 at the rear.

The plaza is situate on and has access to the south side of Ellesmere Road which is a significant and heavily travelled traffic artery, being one of the major roads within Metropolitan Toronto through Scarborough. The road forms a distinct line of division and demarcation in the area; to the north is an extensive industrial area, to the south there is a considerable residential area resulting from sub-division development, some 20 years ago.

The plaza is south and across from major municipal and commercial developments known as Scarborough Civic Centre and Scarborough Town Centre which are shielded from the road by a wooded area. On the south, a 44 foot wide parking area of the plaza abuts the residential area. There is an emergency exit door from the rear of the restaurant to this area. The nearest home is about 43 feet further away. There is a 6 foot cement and wire mesh wall at the edge. The level of the lands immediately adjacent are about $3\frac{1}{2}$ feet lower. There are two exits leading out to Saratoga Drive which runs south from Ellesmere Road into the residential area on the west side of the plaza.

There are five licensed restaurants within the Scarborough Town Centre. The next nearest licensed premises is the Town and Country about one-half mile east of the plaza.

There are five other licensed establishments in the general district. All are about a distance of a mile or so away and are situate generally on north-south traffic routes.

On or about July 26th, 1979, the applicant applied for a dining lounge licence for the sale and service of spirits, beer and wine.

Notice of the application was published in the Toronto Star on September 10th, 1979 and on September 26th, 1979 and pursuant thereto a public meeting was held at 55 Lakeshore Blvd. East, Toronto on Tuesday, October 2nd, 1979.

Prior to and at the date of the public meeting, there were filed with the Board written objections to the issuance of the licence. The objections form part of the Record.

Prior to and at the date of the public meeting, there was filed with the Board written material in favour of the application which also forms part of the Record.

At the public meeting, several persons appeared and voiced objection to the issuance of the dining lounge licence.

On the 9th day of October, 1979, the Liquor Licence Board issued a Notice of Proposal pursuant to Section 12 of The Liquor Licence Act, 1975:

"to refuse to issue a dining room licence to the applicant because the issuance of the licence is not in the public interest, having regard to the needs and wishes of the public in the municipality in which the premises is located."

After a Board hearing on the 27th February, 1980 to deal with the proposal on the 6th of March, 1980, the Board issued its decision:

"The Board 'APPROVES' the issuance of a dining lounge licence in respect of Pros Restaurant, 1591 Ellesmere Road, Borough of Scarborough, with the following terms and conditions:

- (1) Hours of sale and service of alcoholic beverages - 12:00 noon to 10:00 p.m. daily;
- (2) No live adult entertainment or music of a nature disquieting to the neighbourhood;
- (3) Future extension of hours of the sale and service of alcoholic beverages is not negotiable and the transfer of the liquor licence to any subsequent owner will be subject to these same terms and conditions."

Conditions of this nature were requested by the Borough of Scarborough in a letter filed by the Board after a council meeting held September 17, 1979. The applicant filed with the Board a Consent to such conditions on or about 20th of May 1980.

Luba Fraser, in her personal capacity and on behalf of some 114 residents, requested a hearing and was specified a party to the proceedings before the Tribunal.

The operation of the restaurant is described as "well-run and kept up to a standard...above reproach" and as follows:

the service is excellent, the food is excellent, the renovated surroundings are "beautiful".

The operation is a family one, and there is some member of the Ouzounis family continuously on the premises during the full day. Generally, the restaurant has been opened from 6:00 a.m. to 8:00 p.m. with an occasional 9:00 p.m. closing. The nature of the operation has created a personal relationship between members of the Ouzounis family and residents of the neighbourhood who patronize the restaurant. Such residents made reference to the more intimate relationship which exists in a community facility as compared with the impersonality of a large shopping centre and the shops thereof.

The plaza is situate in the north-east corner of what is described as the busiest community in Scarborough. It is in the area from which the Glen Andrew Community Association draws its membership, namely, bounded by the Scarborough Town Centre on the north, McCowan Road on the east, Lawrence Avenue on the south, and Applefield Drive on the west. (herein referred to as Area A). The portion of the community closest to the plaza is that area bounded on the north by Scarborough Town Centre, on the east by the residential area east of McCowan Road, on the south by Brimorton Road, and on the west by Brimley. (herein referred to as Area B). Within that area there are some six homes on Stanwell Drive and some five homes on Saratoga Drive which are in physical proximity with and contiguous to the plaza. (herein referred to as Area C). The residential streets affected by traffic to and from the plaza are Saratoga, Aspendale, and Packard, some of the streets west thereof, generally leading ultimately into Brimorton.

The patrons of the restaurant can be divided into three categories: One third being residents of the neighbourhood, one third being persons working in the businesses in the plaza, and one third being transients who are travelling along Ellesmere Avenue. There is some family business from the first category, and the presence of under-age persons is strictly controlled.

The issue before the Tribunal is whether the application for the licence comes within the exception to entitlement set out in Section 6(1)(g) of The Liquor Licence Act, as being "not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located".

With respect to this application, there is a clear division of expression of needs and wishes. Members of the public in the Municipality of Scarborough have completely opposite positions; some are strongly in support of the application and some are strongly opposed to the application.

It is within the Area A served by the Glen Andrew Association in which the division has taken place in a pronounced way, particularly within the north-easterly portion thereof. Those who are physically adjacent to the plaza (in Area C) being the more significant part of those on whose behalf Luba Fraser appeared are in strong opposition. The Glen Andrew Association, being committed to opposition on general principle to licensed premises in neighbourhood convenience plazas which directly abut residential areas, took the position formally in opposition to the application, supporting the adjacent residents in their position. The wishes in the main of those within Area C and the Glen Andrew Association are that no licence be issued, that any needs can be satisfied elsewhere.

The Area B has within it the bulk of the one third neighbourhood patronage, the remainder being from the immediate vicinity. Such patrons expressed themselves clearly with respect to their needs and wishes. They have expressed the need for the service of alcoholic beverages in a restaurant which they prefer to patronize because of its family operation and the personal service, attention, and relationships which have arisen thereby and wish the licence to be issued. They have expressed a need and wish for a licensed restaurant to which they can walk, to which they can take their families. Those needs and wishes are expressed notwithstanding the presence of five licensed premises situate within the Scarborough Town Centre, or of the others referred to. The Tribunal is of the opinion that the needs and wishes of the one third of the patrons who work in the plaza are in favour of the issuance of the licence. Their needs are related to eating close to place of work, and a need for service of an alcoholic beverage with a meal, and wishes, accordingly, that the licence be issued.

The concerns of those opposed to the issuance of the licence related to their concerns are summarized in the Notice of Proposal:

- a) the proliferation of licensed premises in the area;
- b) inadequate parking facilities in the plaza;
- c) traffic congestion on adjoining residential streets;
- d) the increase in the number of motor vehicles being operated by persons under the influence of alcohol;

- e) the close proximity of the premises to a residential area and the resulting noise and inconvenience to the residents;
- f) the licensed premises is not a desired or intended attribute of a neighbourhood plaza.

Two main aspects of the basis of opposition were placed strongly before the Tribunal. One was the possibility of increase in traffic problems--safety, congestion, parking both within the plaza and on the neighbouring streets. The other was the possibility of a change in character, a change in atmosphere, in the neighbourhood by reason of the presence of a licence premises, and resulting noise emanating therefrom and behaviour of patrons upon exit, especially at night time. Residents felt that if the possibilities became fact, there would be a negative affect on their life style, and property value. These concerns about possibilities were not shared by those residents of the area who supported the application; indeed, they were strongly disputed.

The Tribunal accepts the objections of the opposed residents as being bona fide and is sympathetic to their concerns. However, the Tribunal has not been persuaded that a restaurant within a community plaza, which services the community adjacent to it just as Beckers and other shops do should not also give the service of alcoholic beverages to those members of the community who wish such service.

Mrs Fraser has posed the question as to what benefit there will be to the community by the issuance of the licence. The issue before the Tribunal is not that of benefit but of determining of the public interest having regard to needs and wishes. Though the satisfaction of the need as expressed by those who are in support of the application may be considered a benefit, it is not necessary to determine the issue from the point of view of a benefit being conferred.

The question resolves itself into a determination of whether the needs and wishes of the public made of those residents in the area of the plaza and of those who work in the plaza and who are in favour of the issuance of the licence should be considered as being greater on balance than the needs and wishes of the public made up of those residents who are opposed to the issuance.

It is clear that the Board arrived at a decision which it believed would meet the needs and wishes of the former groups and to a degree assuage the concerns of the latter group. Accordingly, they attached certain conditions to the issuance of the licence. This, the Tribunal, is empowered by the Act to do.

The terms and conditions are such as would tend to foster the concept of a restaurant designed basically to serve residents within a community neighbourhood, as well as persons employed within the plaza of location.

The Tribunal finds on balance that the entitlement of the applicant does not come within the exception of Section 6(1)(g). The Tribunal accordingly confirms the decision of the Board to issue the licence, and the Tribunal attaches the following terms and conditions to the licence:

- (1) Hours of sale and service of alcoholic beverages--12:00 noon to 10:00 p.m. daily. This term and condition will run with the licence and the licensee and any successor shall not at any time during the term of this licence or renewal thereof apply for an extension of hours of sale and service of alcoholic beverages;
- (2) No live adult entertainment or music of a nature disquieting to the neighbourhood;
- (3) There shall be no physical extension of the premises to which this licence is applicable;
- (4) The transfer of the liquor licence to any subsequent owner will be subject to these same terms and conditions.

The Liquor Licence Appeal Tribunal hereby directs the Liquor Licence Board to issue a Dining Lounge Licence to the applicant with the above terms and conditions attached to the licence.

PROS RESTAURANT, SCARBOROUGH

Board decision to issue
Dining Lounge Licence
to PROS RESTAURANT
MEETING TO DECIDE STATUS TO APPEAL

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
GORDON PURVIS, Q.C., MEMBER
K. P. VAN HAMME, MEMBER

COUNSEL: P. SCHRIEDER representing the Applicant
S.A. GRANNUM representing the Liquor
Licence Board

AGENT: LUBA FRASER on behalf of herself and others

DECISION: June 9, 1980

By letter dated March 24th, Luba Fraser required a Hearing by the Tribunal - "Under Section 15(1) of the Liquor Licence Act, I wish to file an appeal on behalf of the residents living in the area who are aggrieved by the decision of the Liquor Licence Board."

The right of Luba Fraser to require a hearing was challenged on behalf of the Board and by the Applicant.

The Tribunal finds:

1. At a public meeting held at Toronto on October 22, 1979, to hear representation from the public Luba Fraser was represented by Paul Cosgrove as solicitor, and spoke on behalf of herself and on other residents in opposition to the application.
2. A notice of meeting (sic) was mailed to and received by Luba Fraser in respect to a hearing requested to deal with a notice of proposal to refuse to issue the licence.
3. At that hearing Luba Fraser made a submission to the Board on behalf of herself and certain other residents against the application.

4. A copy of the Board decision on the 6th day of March, 1980, was mailed to Luba Fraser and received on or about the 12th day of March, 1980. The Tribunal notes that the decision of the Board refers to a submission against the application for the liquor licence made by Paul Cosgrove on behalf of a group of ratepayers residing in the immediate area in which the proposed licensed premises is located, and that a copy of the decision was sent to him.

5. That Luba Fraser prior to the mailing of the letter requiring the hearing spoke to a number of residents in the area, some of whom spoke to others and they and some of the others orally authorized Luba Fraser to proceed with an appeal.

6. That subsequent to the letter of requirement an authorization was made in writing by a substantial number of residents.

The issue before the Tribunal at this meeting is whether Luba Fraser has status i.e. the right under the statute to require a hearing by the Tribunal.

Relevant sections of the statute are as follows:

15. - (1) Any party to a proceeding before the Board under section 13 who is aggrieved by the decision of the Board may, within fifteen days after he is served with the decision of the Board, mail or deliver to the Board and the Tribunal a notice in writing requiring a hearing by the Tribunal.

(5) The Board, the applicant or the holder of the licence or permit who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section.
1975, c.40, s.15.

13.-(1) Where the Board is required to hold a hearing under Section 12, the chairman of the Board shall refer the application to two or more members of the Board designated by the chairman, who shall constitute the Board for the purposes of the hearing and decision.

(2) The Board shall fix a time and place for the hearing of the application and shall at least ten days before the day fixed cause notice thereof to be served

upon the applicant, and upon any other person appearing to the Board to have an interest in the application.

(3) Every person upon whom notice of a hearing is served and any other person added by the Board is a party to the proceedings.

The Tribunal finds:

1. That Luba Fraser was a party to the proceeding before the Board in that a Notice of Hearing was served upon her.
2. That she attended the hearing as a party on behalf of herself personally and on behalf of other residents.
3. That since the decision of the Board was contrary to the submission of Luba Fraser, she and those on whose behalf she spoke were aggrieved by the decision, and they have a substantial interest in overturning the decision.
4. That it was not disputed that the requirement for the Tribunal hearing was made within the statutory period.

The Tribunal hereby determines that Luba Fraser is entitled to require a hearing by the Tribunal in this matter, and the Tribunal hereby specifies Luba Fraser to be a party to the proceedings in a personal capacity and on behalf of certain other residents in respect of the Tribunal hearing.

ROSSLAND PARK COUNTRY CLUB, Oshawa

Application for Special Occasion permit
by Herman Kassinger Charitable Foundation
APPEAL FROM REFUSAL TO ISSUE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
BARBARA J. SHAND and
KENNETH VAN HAMME, Members

COUNSEL: ROBERT DOUMANI) representing the
DAVID POYNTON) Applicant
S.A. GRANNUM, representing the Liquor Licence Board

DECISION: OCTOBER 15, 1980

At the conclusion of the Hearing in the presence of the two Members, the Chairman gave an oral decision:

By agreement between the parties the issue before the Tribunal is whether the Applicant, Herman Kassinger Charitable Foundation, is a person entitled to be issued special occasion permits pursuant to section 35 (2) of Ontario Regulation 1008/75, which provides as follows:

A special occasion permit for an event described in subsection 1 may only be issued to a charitable organization registered under the Income Tax Act (Canada) or a service group or other association organized for the advancement of charitable, educational, religious or community objects.

The Tribunal finds that Herman Kassinger Charitable Foundation registered under the Income Tax Act (Canada) as of the 1st of April, 1980 with a registration number assigned of 0578153-03-13 is an organization which is (I quote): "a charitable organization registered under the Income Tax Act, Canada" and therefore an organization to which a special occasion permit under subsection 2 may be issued. The Tribunal notes that at the time of the hearing and the decision of the Board a significant ingredient with respect to the applicant namely registration under the Income Tax Act, Canada was not before the Board.

No evidence has been placed before the Tribunal that the Applicant comes within any of the exceptions set out in Section 6 as referred to in section 8 subsection 2.

The Tribunal notes for the record that as agreed to by Counsel for the Board the premises Rossland Park Country Club,

500 Mayfair Avenue, Oshawa do not come within the purview of section 33 (16) of Ontario Regulation 1008/75.

The Tribunal hereby directs the Board to issue to the Applicant Herman Kassinger Charitable Foundation the Special Occasion Permit applied for amended with respect to the date of the event.

The direction of the Tribunal is subject to the Applicant complying with all other requirements with respect to the permit as set out in the Act and Regulations.

SCOLLARD RESTAURANT

Application for a Pario (Dining Room) Licence
by Mrs. Sally Cooper
APPEAL FROM REFUSAL TO ISSUE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
GORDON PURVIS, Q.C.,
BARBARA J. SHAND, Members

COUNSEL: C. LETOVSKY, representing the applicant
S.A. GRANNUM, representing the Liquor Licence Board

DECISION: March 14, 1980

Mrs. Sally S. Cooper is the owner of the premises known as Scollard Restaurant located at Lower Level, 80 Scollard Street, Toronto, in respect of which there has been issued a Dining Room licence.

In June, 1979, the applicant applied for a Patio (Dining Room) licence adjoining.

The proposed seating capacity of the patio is Thirty-one (31) persons and it adjoins a dining room which has a seating capacity of Fifty-six (56) persons.

The proposed hours are 8:00 a.m. to 8:00 p.m.

The fact of the application was published in the Toronto Star on September 19th and 26th, 1979. A Public Meeting was held at Toronto on October 3, 1979.

After the Public Meeting, the Board issued a notice of proposal to refuse the issuance of the licence.

The Board after a hearing on 27 November, 1979, issued a decision refusing the issuance of the licence on the grounds that it is not in the public interest, having regard to the needs and wishes of the public in the municipality. The applicant thereupon requested a hearing by the Liquor Licence Appeal Tribunal.

Prior to January, 1978, the Scollard Restaurant had been in operation (not under that name) at 101 Scollard as a legal non-conforming use for the Zoning By-law No.20623 extant since 1963 does not permit use of the said premises for the purposes of an eating establishment.

Upon an application with respect to moving the business to 80 Scollard and the use of a portion thereof for the purposes of a delicatessen, including a gourmet and take-out

restaurant, by decision dated February 7, 1978 the Committee of Adjustment found that the move of the restaurant to 80 Scollard Street "is supported by the community who are of the view it will make an improved contribution to the area" and that the application is desirable for the appropriate development or use of the land, building or structure, and so Scollard Restaurant is now a legal use.

At the outset the Tribunal establishes for the record that there is no disentitlement to the licence based on either the character of the applicant or of the nature of the operation. It is accepted that were it not for the exception set out in section 6(1), paragraph (g), the applicant and establishment are of the kind that would be entitled to the licence with respect thereto.

The matter before the Tribunal is not whether a Dining Room licence should be granted, nor whether the operation of a patio area for the service of food should be in operation. The matter is whether a Patio (Dining Room) licence should be granted, and the issue is whether the issuance thereof is in the public interest, having regard to the needs and wishes of the public in the municipality in which the premises is located.

Opposition to the application was expressed by individuals in writing and by personal attendance at the Board meeting and today at the Tribunal. They were residents and commercial establishment operators, and an ABC Area Residents' Association representative. Also present to express their opinions and the feelings of constituents were the two Municipal Ward 5 representatives.

On behalf of the applicant there was submitted at the Board a petition before the Tribunal signed by "persons in favour of the Scollard Restaurant being able to serve wine and beer on their patio during the warm months", and the application was supported at the Tribunal hearing by Mr. Bluestein, a realtor with a considerable interest and knowledge of Scollard Street.

The Tribunal makes reference to its decision in the matter of Pros Restaurant, Scarborough, rendered on the 12th January, 1979, and reported in Volume 2 of the Summaries of Decisions on page 148, more particularly pages 155 & 156.

Reference was also made to the decision respecting Donwood released December 5, 1979, in particular page 5.

Scollard Street is presently an area of mixed residential and commercial use. There is strictly residential use, strictly commercial use, and combined residential and commercial use, either by proprietors who also live there, or proprietors who have tenants.

This is not a situation where residents and proprietors of businesses are on opposite sides. There is a mixture of both in support of and against the application.

The objections are based more on what may occur rather than what presently is the situation on Scollard Street.

Noise, traffic congestion, drug problems, the behaviour of oases of night people, vandalism, are matters of concern, not in relation to a presence on Scollard Street at the present time and there is no suggestion that any of this is caused by the presence of Scollard Restaurant, but as potential factors in the light of the situation to the south.

The general feeling of those in objection is summed up in one letter placed before the Board and Tribunal and one before the Tribunal. I read from the letter of August 2, 1979, by Linda Marshall who testified in person at this hearing:

" Restaurants are destabilizing the transitional nature of this Street, zoned Residential/Commercial between Bay and Hazelton, which is meant to separate the restaurant-disco orientation of Yorkville to the South and the residential areas to the North and West, including a school immediately behind 80 Scollard. At present we are suffering from the effects of the type of activity permitted on streets to the South, and we believe that your decision is not only providing a current problem on our immediate street but setting a precedent for other restaurants and disco-night club operations to move into Scollard and Hazelton."

I also quote from Exhibit 8 signed by S. Shorthouse:

" Yorkville Ave. has long supported entertainment-oriented businesses while Scollard St. has a character quite different in that the low key type business efforts keep regular daytime hours. There is a spirit of neighborly co-operation between the residents & merchants who understand that Scollard St. acts as a buffer zone between Yorkville & the residential area around Jesse Ketchum Public School."

The writer also makes reference to maintenance within Toronto of a safe and liveable downtown core.

Scollard Street is the southerly boundary of an area which is predominantly residential to the north within the confines of Bay Street on the east and Avenue Road on the west.

It is clear that the intent of the municipality as expressed in its proposed zoning by-law, and certainly the intent of those who appear in opposition to the application, that Scollard Street be a transition area. In this regard it will continue as a mixed Commercial/Residential buffer but one in which there will be excluded certain activities, including eating establishments. Of course the presence of Scollard Restaurant is a fact - the presence of the patio is a fact. However there is no doubt a genuine concern on the part of the objectors that a patio service with wine and beer will lead to an environment and direction that will more closely tie Scollard in with the atmosphere and environment of the Yorkville-Cumberland area which they do not wish.

The needs and wishes of those who support the issuance of a licence to the applicant can without too much difficulty or inconvenience be satisfied by the present patios which are located close at hand to the area in which Scollard Restaurant is sited. Their wishes for the amenities can be met in this regard.

The Tribunal finds that the predominant expression of needs and wishes of the public concerned is that it is not in the public interest that a Patio (Dining Room) licence issue.

The decision of the Tribunal is that the decision of the Liquor Licence Board to refuse to issue a Patio (Dining Room) licence to the applicant be confirmed on the grounds that the issuance of the licence is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located.

SHAWNEE TAVERN & STEAK HOUSE

Application for Dining Lounge Licence
by Daniel Alaica and Mrs. Tomka Alaica
APPEAL FROM DECISION ATTACHING TERM AND CONDITION

TRIBUNAL: J. W. ERICKSON, Q.C., VICE-CHAIRMAN AS CHAIRMAN
GALE McAULEY and
JACK C. SIM, MEMBERS

COUNSEL: S.A. GRANNUM representing the Liquor Licence Board

AGENT: Daniel Alaica and Tomka Alaica, acting on their
own behalf.

DECISION: OCTOBER 6, 1980

Daniel Alaica and Mrs. Tomka Alaica are licensees,
Number 090117 and the owners of premises classified as a tavern
known as Shawnee Tavern, 1721 Shawnee Road, Windsor. The Licence
issued is a Dining Lounge Licence Serial #6812.

The owners purchased the business in 1977 and have operated
since that date.

On the 11th day of April 1980 the Board issued a "Notice
of Proposal" to attach a "Term and Condition" to the Dining
Lounge Licence of the above establishment that

"the sale and service of liquor in the establishment
shall cease at 10:00 p.m."

FOR THE FOLLOWING REASONS:

"The licensees are in breach of a "Term and Condition"
of their liquor licence in that, contrary to Section 5,
subsections (31) and (31a), the licensees have failed
to maintain books and records that fully and clearly
set forth a daily record of purchases, sales and stocks
of liquor and food."

After a hearing held before the Liquor Licence Board on
Tuesday, June 24th, 1980 to consider its proposal the Board was
satisfied that the licence holder had carried on activities that
were in contravention of the said Act and therefore directed the
"Term and Condition" to take effect commencing July 14th, 1980.

A hearing was requested before the Liquor Licence Appeal Tribunal and said hearing was held on September 5th, 1980.

The Tribunal finds there is a clear breach of Section 5, subsection 31 of the Regulations to the Liquor Licence Act having been established by the evidence, the Tribunal pursuant to Section 15 of the Act, confirms the Order of the Liquor Licence Board subject to alterations so that the "Term and Condition" shall read as follows:

"Commencing on Wednesday, the 1st day of October, 1980, the Term and Condition is that the sale of alcoholic beverages in the 'Dining Lounge' of the Shawnee Tavern shall cease at 10:00 p.m. daily until such time as a proper method of maintaining the food and liquor statistics is implemented, as a result of which there is evidence of conformity to the Regulations to the satisfaction of the Board."

Evidence was given by the licensee that he does keep a book showing daily sales but he did not produce it. The Tribunal directs the Board to have one of its inspectors examine the system of bookkeeping to ascertain if it achieves compliance with the Act. In the event there is compliance with Section 5, subsection 31, then the Term and Condition shall not be implemented.

STAFFORD TAVERN, TORONTO

Lounge Licence
issued to
J & P Hotel Holdings (Toronto) Limited
APPEAL FROM SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C. CHAIRMAN
JOHN W. ERICKSON, Q.C., VICE-CHAIRMAN
BARBARA J. SHAND, MEMBER

COUNSEL: DEMETRIUS PANTAZIS representing the Licensee
S.A. GRANNUM representing the Liquor
Licence Board

DECISION: January 24, 1980

J & P Holdings (Toronto) Limited is the licensee
(#092145) of premises classified as a Tavern and known as
Stafford Tavern, 940 Danforth Avenue, Toronto.

The sole officer and director of the corporation is
Dimitrios Panagiotopoulos, and at all material times he has
managed and operated the licensed premises.

The licence issued is as follows:

Lounge Licence Serial #L 0827 in respect of 2 rooms located:

1. Second Floor, South Section, capacity 69
2. Main Floor, South Section, capacity 156.

When the licensee acquired the establishment in
October, 1974 it was classified as a Public House for the sale
and consumption of beer. After extensive renovation in 1976
the establishment was reclassified as a Tavern and a lounge
licence issued for the sale of spirits, beer and wine.

On the 26th of June, 1979 the Liquor Licence Board
issued a Notice of Proposal to revoke the liquor licence for
the following reasons:

"6. On the 27th of November, 1977 the Liquor
Licence Appeal Tribunal after a hearing confirmed the Board's
decision to suspend for ten days the liquor licences of the
licence holder for permitting drunkenness and disorderly conduct
on the licenced premises (See Summaries of Decisions, Vol. 1
P. 77 - Tribunal note)

7. On September 27th, 1978 the Liquor Licence was again suspended by the Board for three weeks for permitting disorderly conduct on the premises and permitting persons under the age of nineteen years on the licensed premises.

9. Notwithstanding that the second floor premises is licensed as a lounge, the licence holder permits the use of the said premises by patrons on Sundays, contrary to Section 6, Subsection (3) and Subsection (21) of the Regulations.

10. On Tuesday, April 3, 1979 at about 12:35 a.m. the licence holder permitted a person apparently under the age of nineteen years to enter the licensed premises contrary to Section 5, Subsection (5) of the Regulations. The name of the said person was Kimberley Ann Unger, born 1st January, 1962.

11. The past conduct of the sole officer and director of the licensee corporation affords reasonable grounds for belief that its business has not and will not be carried on in accordance with law".

Relevant sections of the Liquor Licence Act and Regulations thereunder are:

Liquor Licence Act, 1975

Section 45 (1)

"No person shall knowingly sell or supply liquor to a person under the age of nineteen years".

Ontario Regulation 1008/75:

Section 5 (5)

"Subject to section 46, no holder of a licence shall permit any person under or apparently under the age of nineteen years to enter or remain upon the licensed premises".

Section 6 (1)

"Except for Christmas Day and Good Friday, liquor of the type authorized by a licence may only be sold and served in the premises for which the licence is issued between the hours of 12 noon and 1 a.m. of the following day on Monday to Saturday".

Section 6 (3)

"Where the premises licensed as a dining lounge are open on a Sunday.... the holder of the licence may use premises for which a lounge licence is issued located in his establishment for the sale and service of liquor with meals".

Section 6 (21)

"Every premises for which a public house licence is issued shall be cleared of patrons within one-half hour after the sale and service of liquor ceases".

Reference is made to the Notice of Proposal dated the 26th of June, 1979 issued by the Liquor Licence Board to revoke the licences issued to this establishment and the decision rendered by the Board suspending the licence on certain terms.

Upon the evidence of Sgt. R. Prior and Police Constable J. Anderson of the Metropolitan Toronto Police Force, the Tribunal finds that on Tuesday, April 3rd, 1979 at about 12:35 a.m. the licence holder herein permitted a person apparently under the age of 19 years to enter the licensed premises contrary to Section 5 (5) of the Regulations. The said person was Kimberley Ann Unger, born 1st January, 1962. The evidence of the police officers shows that Kimberley Ann Unger, a person who to the police officers appeared to be under the age of 19, was sitting some 12 feet away from the president of the Corporation, Mr. D. Panagiotopoulos, and the waiter who had served her. At the time there were only 11 other patrons in the establishment.

On questioning by Sgt. Prior, Miss Unger produced a birth certificate finally, which indicated her age as of the 1st of January, 1962. It was admitted that her age had not been checked on that date. Mr. Panagiotopoulos testified that he had made a check some days earlier because of his opinion that she was around 18½-19 years of age, and that she had produced an identification which was claimed to have been the property of a cousin.

The Tribunal finds that Mr. Panagiotopoulos, having accepted a single item of identification from a person in respect of which he had some doubt as to age, was negligent in not having assured himself more definitely of the age of the person, though at the time there was no compulsion as to the use of the Age of Majority Card with the photo. Mr. Panagio-

topoulos had already had some experience with respect to under-aged persons in that there had been a suspension levied earlier in respect thereof. That a charge under Section 45 (1) of the Liquor Licence Act was dismissed is not inconsistent with the finding of a breach of Section 5 (5) of the Regulations. The two breaches are completely separate. Section 45 (1) has ingredients in it which are not required in respect to Section 5 (5) of the Liquor Licence Act.

The Tribunal finds further on the evidence of the 2 officers that notwithstanding that the 2nd Floor premises was licensed as a lounge, the licence holder permitted the use of the said premises by patrons on Sundays for the service of liquor contrary to Section 6 (3) and 6 (21) of the Regulations, and of Section 6 of Subsection (1) which states the hours of service in a lounge.

Mr. Panagiotopoulos had been in the operation of the establishment for some time and had been involved in the conversion of the premises with a public house licence to a tavern with a lounge licence. There was absolutely no excuse for the service of liquor on Sunday and the use of these lounge premises. The breaches set out in these 2 matters are sufficient cause for the suspension imposed by the Liquor Licence Board.

Counsel for the licence holder has brought out the significance of a suspension or revocation with respect to financial consequences. The Tribunal has before it the history of the operation of this particular establishment. The Tribunal is mindful of the fact that as set out in Paragraph 6 of the Notice of Proposal there was a confirmation by this Tribunal of the decision of the Board suspending the licence for 10 days in November, 1977, and that on September 27, 1978 the licence was again suspended by the Board for 3 weeks for permitting disorderly conduct on the premises and permitting persons under the age of 19 years on the licensed premises.

Further, and without making a decision whether the actions of the licence holder in respect of the noise emanating from the establishment through the provision of live band music and singing provide a cause for suspension, in the consideration of the penalty to flow from the breaches committed by the licence holder, the Tribunal finds that is another aspect of the conduct of the chief officer of the licence holder which falls far short of the standards necessary to the operation of this establishment. The conduct of the chief officer since the meeting of this Tribunal, 17 October, 1979 respecting the Stay of the suspension is such that little consideration can be

given at this time to any further sympathetic attitude towards the licence holder. In the face of a specific commitment in respect to not permitting music till installation of a sound-proof barrier acceptable to inspectors of the Noise Control section of the City of Toronto, the licence holder continued such action, which has continued until as late as Monday past. Also, at the time of the granting of the Stay based on the acceptance by the Tribunal of the seriousness of the consequences of a suspension, the Chairman had occasion to make known views with respect to the importance of the licence holder conducting himself in a way that would not cause concern to others.

Mr. Grannum has asked for an Order by the Tribunal to revoke the licence. Without making a ruling as to the authority of the Tribunal to do so under the circumstance of this case, in the light of the fact that no notice was given that such a request would be made, the Tribunal, without finding specifically that notice should be given, does not see fit to grant such a request.

The matter of a transfer to members of the family, as contemplated, is something that will have to be dealt with by the Board within its authority and powers based on whatever action the licence holder will take in that regard. The Tribunal makes no direction with respect thereto.

For the reasons stated herein based on the findings of the Tribunal, the Tribunal confirms the decision of the Board and directs the Board to set the date for the commencement of the suspension.

The Decision was rendered orally by the Chairman at the conclusion of the hearing.

ST REGIS HOTEL, North Bay

Lounge Licence issued to
Mrs. Norma Lumley and Mrs. Ruth Lafrance
APPEAL FROM SUSPENSION

TRIBUNAL : JOHN YAREMKO, Q.C. CHAIRMAN
 BARBARA J. SHAND, MEMBER
 JACK SIM, MEMBER

COUNSEL : S.A. GRANNUM representing the Liquor Licence
 Board

DECISION: April 29, 1980

As neither the Applicants nor anyone on their behalf appeared, the Tribunal delayed the hearing for 10 minutes and then proceeded in the matter after evidence was given of proper service of the Notice of Hearing.

An examination of the exhibits filed disclosed:

On the 3rd day of December, 1979, the Liquor Licence Board issued a decision suspending the licence herein.

On the 12th day of December, 1979, a hearing of the Tribunal was requested. Thereafter no communication was had from the Applicants.

On or about the 19th February, 1980, the mortgagee in possession applied for a transfer of the licence which was completed on or about 18th March, 1980.

The Decision was given orally:

Upon a consideration of the matter, the Tribunal is of the opinion that the Applicants no longer have status as applicants for a hearing before the Tribunal. They are no longer holders of a licence. It is noted that section 12 refers to the expression "holder of the licence". Lack of status is further confirmed by the fact that one of the Applicants has quit claimed an interest. Having held that the parties have no status, accordingly the Tribunal holds that it has no jurisdiction to hold a hearing.

THREE-STAR RESTAURANT, Alliston :

Dining Lounge Licence
issued to
ALEXANDRA LEGAKIS, JOHN LEGAKIS,
GEORGE THEOLOGOS AND MARIA THEOLOGOS,
Licensees
APPEAL FROM ORDER REFUSING TO REMOVE TERM AND
CONDITION

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE-CHAIRMAN AS CHAIRMAN
BARBARA J. SHAND,
M. GALE MCAULEY, Members

COUNSEL: JOHN LEGAKIS, Agent for Licensees,
S.A. GRANNUM, representing the Liquor Licence Board

DECISION: JUNE 10, 1980

Alexandra Legakis, John Legakis, George Theologos and Maria Theologos are the Licensees of premises classified as a Dining Lounge known as Three-Star Restaurant, 214 Victoria Street East, Alliston, Ontario, under Dining Lounge Licence No. 020585.

A public meeting was held in Barrie, Ontario on December 5th, 1979, to consider an Application to remove the Term and Condition relative to hours of operation for the sale and service of alcoholic beverages in the Three-Star Restaurant.

Subsequent to the above public meeting, the Board proposed to refuse to remove the Term and Condition and following a request by the Licensees for a Hearing, the Hearing was convened in the Town of Alliston on February 28th, 1980. At that hearing the Board's decision was that, effective March 31st, 1980, the hours for the sale and service of alcoholic beverages be as follows:

Monday to Friday inclusive -	2:00 p.m. to 11:00 p.m.
Saturday	- 12:00 noon to 11:00 p.m.
Sunday	- 12:00 noon to 10:00 p.m.

The above decision increased the hours which were previously in existence and which were:

Monday to Saturday inclusive -	5:00 p.m. to 11:00 p.m.
Sunday	-12:00 noon to 10:00 p.m.

The sole issue to be decided by the Tribunal was whether or not, on the evidence presented, the Licensees would be permitted to sell alcoholic beverages from 12:00 noon or 2:00 p.m. to 11:00 p.m. Monday to Friday inclusive.

The record of proceedings before the Liquor Licence Board indicated that those in opposition to the Application were concerned with the possible consumption of alcohol particularly by students of the Banting Memorial High School directly across the road from Three-Star Restaurant. It is noted too that opposition to the Application was presented by way of a copy of Resolution passed by the Simcoe County Board of Education as of December 3rd, 1979. It must also be noted that no one giving evidence was critical of the manner in which the Licensees are presently operating the licensed premises.

Also at the Board Hearing, those in support, including a Petition of some 300 persons, asked the Board to take into consideration the Licensees' present policy of discouraging students from using the licensed part of the premises. In arriving at its decision, the Board also considered the record of the Licensees without any noticeable criticism in their close to three years of operation.

At the Tribunal Hearing the Liquor Licence Board inspector in giving his evidence stressed the fact that he had always kept a close eye on the establishment, the Licensees were very competent, and ran an excellent restaurant with absolutely no complaints or problems. The excellence of the establishment was verified also by the testimony of witnesses.

In the town of Alliston there are five other licensed premises all being permitted to sell alcoholic beverages commencing at 12:00 noon Monday to Saturday.

The establishment is a family restaurant and discourages students from entering the Dining Lounge with a sign in the window to this effect. In addition there was produced in evidence a quarterly report of the Licensees to the Liquor Licence Board showing at all times a greater ratio of food being sold than liquor.

On the evidence presented at this Hearing, the Liquor Licence Appeal Tribunal, pursuant to Section 10 (2) of The Liquor Licence Act, hereby removes the Term and Condition of the Liquor Licence Board dated the 5th day of March 1980 to permit the Licensees to maintain the following hours for the sale and service of alcoholic beverages, effective immediately:

Monday to Saturday inclusive	- 12:00 noon to 11:00 p.m.
Sunday	- 12:00 noon to 10:00 p.m.

TORONTO AREA GAYS

Application for Special Occasion permit
for Toronto Area Gays
by Robert G. Stout
APPEAL FROM NOTICE OF PROPOSAL TO REFUSE TO ISSUE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
BARBARA J. SHAND
KENNETH VAN HAMME, Members

COUNSEL: GARY W. CURRAN, representing the Applicant
S.A. GRANNUM, representing the Liquor Licence Board

DECISION: OCTOBER 22, 1980

At the conclusion of the Hearing in the presence of the two Members, who concurred orally, the Chairman gave an oral decision:

The determination to be made by the Tribunal is whether the application for the Special Occasion Permit herein comes within the purview of Section 35. In this regard there are two issues which require determination by the Tribunal: firstly, the nature of the entity on behalf of which the application is made, secondly the role that the entity performs.

The language of Section 35 is very broad in respect of the elements of the issue,

SPECIAL OCCASION PERMITS—FUND RAISING

35.-(1) A special occasion permit for the sale and service of liquor may be issued for an event that is conducted for a purpose that will promote the advancement of charitable, educational or religious works or to serve community needs.

(2) A special occasion permit for an event described in subsection 1 may only be issued to a charitable organization registered under the Income Tax Act (Canada) or a service group or other association organized for the advancement of charitable, educational, religious or community objects.

I will deal with the nature of the entity first. Evidence placed before the Tribunal shows the entity was formed some 5 years ago by a number of individuals. They thereupon set up their own method of function; there was no written constitution or by-laws, no officers were elected. This is not to say that the entity has no rules, no customs which govern its functioning. Indeed the entity has developed such that meet the requirements of those who participate. The entity has a name, a membership list which varies from time to time, an office, a telephone listing and number, a bank account with authorized signatures. More significantly, it has a set of unwritten rules relating to admission and exclusion of members, and as to the nature of its deliberations with regard to principles to be adhered to, and action to be taken, namely - consensus. The Board in its decision stated, (secondly) "The organization Toronto Area Gays is not a properly constituted association in that there is no constitution or by-laws." The Tribunal is of the opinion that the existence of a constitution or by-laws is not a condition precedent to the issuance of a Permit under Section 35. The Tribunal notes the provisions in respect of a club in the Regulations. There is a definition in the interpretation Section 1 para.(d), and there are terms set out in Regulation 22. No similar requirements are set out in this regard with respect to the Special Occasion Permit under Section 25. Mr. Grannum in his argument stressed that the entity must be organized. It has been advanced on behalf of the Applicant that an association is "a body of persons associated for a common purpose." The Tribunal finds that such is not the meaning to be given to 'association', there must be something more than a common purpose. However, the Tribunal finds that in the method of functioning of Toronto Area Gays, there are sufficient aspects to meet the requirements of this being an association within the meaning of Section 35.

I now deal with the role of Toronto Area Gays. Its principal activity has been the maintenance of a telephone line which takes calls from persons who are homosexual themselves, or who want information about homosexuality. At present the telephone line is staffed by two volunteer members from 7 p.m. to 10.30 p.m. Mondays to Saturdays. Approximately 3,000 calls are answered annually. Evidence was placed before the Tribunal that the calls encompass: a) people who seek information; b) parents; c) people who are troubled; d) referrals by social workers on an individual basis; e) persons who have personal problems. That list includes persons who are not homosexual. The Board gave as a reason for its decision "Toronto Area Gays on whose behalf the permit is applied for does not in the opinion of the Board promote the advancement of charitable, educational or religious works, nor does it serve the community needs" The Tribunal is of the opinion that the activity of Toronto Area Gays does serve a community need. The need does not have to be one that is required

by the total community, many community needs are not. It is in the context of a community need that the term 'community objects' must be applied.

The Tribunal directs the Liquor Licence Board to issue the Special Occasion Permit applied for.

The direction of the Tribunal is subject to the Applicant complying with all other requirements with respect to the permit as set out in the Act and Regulations.

TOWN MANOR MOTOR HOTEL

Lounge Licence
issued to
T.M. HOTELS INC.
APPEAL FROM DECISION OF SUSPENSION

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
BARBARA J. SHAND
GALE McAULEY, MEMBERS

COUNSEL: NEIL R. JONES, representing Licensee
S.A. GRANNUM, representing the Liquor Licence Board

DECISION: DECEMBER 12, 1980

The Tribunal finds that on the 12th day of January, 1980 there were on the licensed premises of the Town Manor Motor Hotel herein at 1:50 a.m., 20 to 25 persons sitting at the bar area and at tables, all with drinks - some with two or three in front of them - mixed drinks, bottles of beer, some untouched, others in the process of being consumed.

The premises were in the charge of a bartender-waitress to whom had been assigned, on behalf of the licensee, the responsibility of being in charge of the operation of the premises on that evening and, therefore, in charge of the responsibility of compliance with the necessary provisions of the Act with respect to the hours of operation of the premises.

Accordingly, the Tribunal finds a breach of Regulation 6, subsection 20 and 21, namely:

"Section 6

(20) All evidence of the service and consumption of liquor shall be removed within one half-hour after the sale and service of liquor ceases in a licensed premises.

Section 6

(21) Every premises for which a public house licence or lounge licence is issued shall be cleared of patrons within one-half hour after the sale and service of liquor ceases."

The Tribunal notes that in respect of the breach of Section 6, subsection 21, the licensee was on the 5th day of June, 1980 convicted and a penalty of a fine of \$250.00 was imposed.

After a hearing in the matter, the Board imposed a penalty of suspension of six days.

The facts herein are not disputed. The issue basically before the Tribunal is the quantum of penalty to be imposed. Counsel on behalf of the licensee has submitted that the suspension was "unnecessarily harsh in view of the nature of the infraction and the excellent record of the principal shareholder of the licensee for many years in the hotel industry in Ontario."

No evidence of any problem with the Board either by the licensee or by the principal shareholder in respect of operation going back to 1953 was put before the Tribunal and the decision is based upon the single incident of January 12th.

The Tribunal finds that steps have been taken following the incident, and since that time with respect to the operation of the premises which appear to be adequate to prevent a recurrence of such an incident.

Counsel in support of his argument respecting the harshness of the penalty and the power of the Tribunal has referred to three cases. Without going into the details of the three cases, the Tribunal notes that in two of the cases, The Cecil Tavern and The Wheat Sheaves Tavern, the penalty imposed by the Board was confirmed. In the Oasis case, the Tribunal notes that in that instance, there had been other action taken by the Board in respect of the licensee, which the Tribunal had found to be an additional penalty.

Counsel for the licensee has stressed the consequences of the penalty with respect to the financial effect on the operations and/or the effect on a sale presently being negotiated. The Tribunal is of the opinion that a licensee must be aware that breach of a regulation may lead to a suspension and that suspension may lead to such consequences.

The Liquor Licence Board is charged with the administration of The Liquor Licence Act directly, and for the method of operation of all of the premises licenced under The Liquor Licence Act and with the supervision of the conduct of the licensees and those acting on behalf of the licensees. The Tribunal is loath to interfere with the penalty imposed by the Board in the ordinary course of its administration of the Act.

Accordingly, the Tribunal confirms the said decision and directs the Board to set the exact limits of the terms of suspension.

At the conclusion of the hearing, the Chairman orally gave the decision and reasons therefor in the presence of the two Members who concurred.

TURNING POINT TAVERN, Toronto

Dining Lounge Licence
issued to
J.Patrick Gregg and Annie Gregg
TURNING POINT RESTAURANT
APPEAL FROM DECISION TO REVOKE

MEETING TO CONSIDER extension of time for
the giving of a notice requiring a hearing
for a Stay of the order of revocation

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
GORDON I. PURVIS, Q.C., VICE-CHAIRMAN
KENNETH VAN HAMME, MEMBER

COUNSEL: DAVID J. THOMPSON, representing the Applicant
S.A. GRANNUM, representing Liquor Licence Board

DECISION: OCTOBER 6, 1980

At the conclusion of the Meeting, in the presence
of the two members, the Chairman gave an oral decision:

There are two determinations to be made by the
Tribunal: firstly, the request for the extension of time for
notice requiring the hearing, and secondly the request for a
stay of the Order of the Board.

Dealing with the request for the extension of time,
the relevant section of the Statute is 16 (8)

The Tribunal must make a two-fold determination.
In order that the applicants succeed in the request there must be
an affirmative answer to both parts of the Section. In
regard to the Tribunal being satisfied that there are "reason-
able grounds for applying" Counsel for the Board has admitted,
under the circumstances related to the service of the decision,
and the actions of the Licensee, that this determination
has been met affirmatively. The Tribunal does not have before
it the strict details of the service of Notice of the decision
by the Board in this regard, and accepts the testimony of the
Licensee in respect thereof. Assuming, as was conceded, that
the service took place on or about 31st of July 1980 the
Licensee indicated by his contacts with his Solicitor some
time prior to 15th August (within a fifteen day period) his

determination to appeal.

The second determination is whether the Tribunal is satisfied that there are "prima facie grounds for granting relief". Evidence placed before the Tribunal show in the communications of the Board that the Board Hearing was adjourned for the purpose of monitoring. As set forth in the minutes of the meeting of November 28th: "The Board advised that it would 'Reserve' its 'Decision' pending a three day monitoring of this operation from the standpoint of food and liquor revenue, to be conducted in the early part of March 1980. The Board further indicated that based on its findings at that time a 'Decision' will be rendered." There was concurrently a request for the submission of a current menu. The Notice with respect to that adjournment, dated November 28th, refers to the above advice and in addition states: "Further, the Board made certain recommendations to you with respect to the overall operation of your establishment".

The monitoring did take place, but it was not in respect of the food/liquor revenue, but with respect to overall operation of the establishment. The Licensee was then notified as to the proceeding to be taken by the Board, namely, that the 'Board has appointed (Tuesday, July 8th) to render its decision in this matter.' There is no indication that it was a continuation of a Hearing, and there was no communication to the Licensee of the report that would be placed before the Board at that time for consideration, which in fact it was.

In respect to the liquor/food ratio the figures for March/April would indicate that the balance had been met, as it had in respect of the three days monitoring. The Licensee in his testimony indicated that when confronted with the monitoring report and testimony which related thereto, he disputed some of the allegations, but not having been given notice with respect thereto, was not in a position to bring evidence to refute.

The Tribunal is of the opinion that the Licensee should be given the opportunity to present his case in respect to allegations of which he will have had Notice. Accordingly, the Tribunal is of the opinion that the Applicant has demonstrated prima facie grounds for granting relief within the meaning of Section 16 (8), by reason of the nature of the proceedings carried on by the Board.

For the information of Counsel for the Applicant/ Licensee a Tribunal Hearing enables a review of the operation of an establishment up to the time of the hearing in respect of which the Licensee has received notice, or of the position of the Board of which he is aware with respect to the total

operation of his tavern.

Having made the first determination with respect to the request for an extension, under the circumstances, the Tribunal is of the opinion that a stay of the revocation should be granted.

Accordingly the decision of the Tribunal in this matter is firstly that the extension of time for Notice requiring a Hearing be granted for that period which would make the Notice of Hearing filed valid, is granted, and secondly that the Order of Revocation of the Board is stayed until the Tribunal makes its decision.

UPSTAIRS RESTAURANT

Dining Lounge Licence
issued to
HOEHNDER RESTAURANTS LIMITED
APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: GORDON I. PURVIS, Q.C., VICE-CHAIRMAN AS CHAIRMAN
KENNETH P. VAN HAMME
M. GALE MCAULEY, MEMBERS

COUNSEL: DOUGLAS E. WILSON, representing Licensee
S.A. GRANNUM, representing Liquor Licence Board

DECISION: DECEMBER 24, 1980

This was a hearing held on November 13, 1980, pursuant to Section 15 of The Liquor Licence Act, 1975, before the Liquor Licence Appeal Tribunal sitting at Toronto.

Hoehnder Restaurants Limited is the Licensee (Licence No. 020881) of the establishment classified as a restaurant known as UPSTAIRS RESTAURANT, 136 Yonge Street North, Aurora

The officers and directors of the licensee corporation are:

Jakob H. Schneider - President
Wolfgang Hoehn - Vice-President

The licence holder acquired the licensed premises on or about May 31, 1979, when the liquor licences were transferred to the corporation.

The Licence issued to the Licensee is in respect of the following rooms located at the above address:

1. Second Floor: Southeast Section
2. Second Floor: Northeast Section

On February 11, 1980, the Liquor Licence Board issued a Notice of Proposal to attach to the Dining Lounge Licence of this establishment a Term and Condition that:

"the sale and service of liquor in the
establishment shall cease at 10:00 p.m."

for the following reasons:

"The licence holder is carrying on activities that are in contravention of the Regulations and, in particular, the licence holder has:

- (a) contrary to Section 5, subsection (31)(a) of Regulation 1008/75 under the Act, failed to keep books and records that fully and clearly set forth the daily record of purchases and sales of food and liquor, and
- (b) contrary to Section 6, subsection (5), the total receipts for the sale of liquor having exceeded the total receipts from the sale of food in the same month."

The licence holder had filed with the Board a Statement of the receipts of food and liquor in the licensed premises for the period July 1979 to December 1979.

At a meeting held before the Liquor Licence Board on April 24, 1980, to consider its proposal, the Board found that the aforesaid contravention exists and that the total receipts from the sale of liquor in these premises have exceeded the total receipts from the sale of food, contrary to Section 6, subsection (5) of Regulation 1008/75 under The Liquor Licence Act, 1975, and issued its Decision as follows:

"Commencing Monday, May 12th, 1980, there shall be attached to said Licence the "Term and Condition" that the sale of alcoholic beverages in the Dining Lounge of the Upstairs Restaurant shall cease at 10:00 p.m. daily until such time as the requirements of Section 6, subsection (5) of Regulation 1008/75 are met to the satisfaction of the Board."

The Board indicated also that the operation would be reviewed after a further monitoring of the actual food and liquor sales in this establishment had been completed.

In its decision, the Board noted that, "notwithstanding that the above Statement filed by the Licensee appears to indicate that, except for the month of July 1979, the gross receipts from the sale of food have exceeded the gross receipts from the sale of liquor, an investigation by the Board has ascertained

that the gross receipts from the sale of liquor represents 75% of the total gross receipts, and the gross receipts from the sale of food represents the remaining 25% of sales."

At the Board Hearing, the previous monitoring of the premises by the Board's investigator disclosed that the following percentages existed on the dates mentioned:

January 24th, 1980

Food - 8.8%

Liquor - 91.2%

January 25th, 1980

Food - 25.6%

Liquor - 74.4%

The record of the Board proceedings discloses in the Board's investigator's report that this establishment is located on the second floor of the premises, and the licence presently in effect covers a large room divided into two rooms or sections by a glass wall. One section (No. 1) contains tables which are set for dining at all times with tablecloths, glasses, napkins, etc., and is open for dining from twelve noon. The other section or room (No.2) at the back is used as a discotheque and has the only bar servicing the two areas. It opens at 8:00 p.m. and employs a disc jockey from 9:00 p.m. to 1:00 a.m. Although lighter food items are available in this section, the investigator's report disclosed no food sold during his monitoring, despite a board menu being displayed in the area.

At the Tribunal Hearing, the Board's inspector gave evidence that problems existed and still exist in the establishment regarding the food/liquor ratio, despite his many warnings to the Licensee. In his view, Section No. 2 is not a restaurant but rather a 'disco', where light dining is available but not encouraged to any extent. It attracts a drinking rather than a dining clientele, and therein lies the problem of this establishment's inability to comply with the regulation.

The Licensee, Mr. Jakob H. Schneider, in his evidence, dealt at length with efforts made to promote the sale of food, including encouraging service clubs and other organizations to meet and dine there on a regular basis, the institution of a

larger menu available in both sections, a reduction in liquor and food prices, an increase in radio and newspaper advertising to encourage 'family dining'. He maintained that part of the present problem could be attributed to a number of fast food outlets recently opened in the area, and to the fact that a 100-room hotel was presently under construction which would incorporate the existing establishment as its dining facility. Reference was made to Exhibit 7A which showed a monthly sales chart of Upstairs Restaurant from July 1979 to October 1980. This chart disclosed that from January to October, 1980, the food/liquor ratio each month reflected more liquor sold than food, and ranged from food - 26%, liquor - 74%, to food - 44%, liquor - 56%. The month of October 1980 showed the following:

<u>Food</u>	<u>Liquor</u>
\$10,106.30 - 43%	\$13,506.56 - 57%

On behalf of the Licensee, evidence was given by the Mayor of Aurora, and the Member of Parliament for York North, both strongly in support of the establishment, the maintenance of its licence, and aware of the various problems it has encountered and is encountering in fulfilling its obligations under the Act and Regulation. Here again, the Tribunal observes that compliance with the 50/50 ratio contained in The Liquor Licence Act is a situation confronting every licensee, and the majority of licence holders in this Province do comply.

In the present situation, the sole issue to be determined is whether or not this particular Licensee did or did not meet the food/liquor ratio. The Board and the Tribunal have in the past applied certain criteria or guidelines to assist in determining compliance, and Counsel for the Board and for the Licensee have referred to and dealt in their submissions with these criteria. Firstly, is the stipulation that the establishment is run as a bona fide restaurant/food operation. Physically it has the characteristics of such an operation. But the realism of the present operation dictates that in no sense can Section No. 2, referred to as the 'disco', be termed a bona fide food operation. Under the second criterion, the Tribunal is faced with a question as to whether or not reasonable efforts are being made to meet the requirements. Counsel for the licence holder maintains that various methods have been employed to promote the sale of food, and since April 1980, steady improvement has taken place. On the contrary Counsel for the Board submits that a great deal more effort is needed, and that the Licensee's problem lies in the operation of the 'disco' Section No. 2.

The third criterion poses the question of whether or not reasonable success toward the goal of meeting the requirements in a reasonable period of time is being had. It has been suggested by Counsel for the licence holder that a period of two or three years would be a reasonable period of time. With this contention, the Tribunal cannot agree, and feels that the Board has been more than patient in the granting of time to this establishment so that its total operation could comply with the Regulation. A complete revision of the operation is, in the Tribunal's opinion, required, particularly as it concerns Section No. 2.

The Tribunal therefore finds that the Licensee has been in continuing breach of the Regulation, being Section 6, subsection (5) (a) of The Liquor Licence Act, Regulation 1008/75, and that the Board is empowered to take the action it has.

The Liquor Licence Appeal Tribunal hereby confirms the Decision of The Liquor Licence Board of April 24th, 1980, for the reasons herein and directs the Board to set the effective date of the commencement of the attachment of the Term and Condition. *

* Note: The above decision was appealed to the Supreme Court of Ontario (Divisional Court). The appeal had not been concluded at the time of this publication.

WESTMINSTER HOTEL

Dining Lounge and Lounge Licences
issued to
Westminster Hotel Limited
APPEAL FROM SUSPENSION

TRIBUNAL: GORDON PURVIS, Q.C., VICE-CHAIRMAN as CHAIRMAN
JACK C. SIM and
GALE McAULEY, MEMBERS

COUNSEL: LAWRENCE S. CRACKOWER representing the Licensee
S.A. GRANNUM representing the Liquor Licence
Board

DECISION: August 12, 1980

Westminster Hotel Limited the Licensee herein, is the owner of the Westminster Hotel, located at 240 Jarvis Street, in the City of Toronto, and the following are the officers and directors of the said corporation:

Dr. Harold Dennis, President
Benjamin P. Ulster, Vice-President
Lowell Dennis, Secretary
Susan P. Dennis, Treasurer

At all material times George Cummings was the General Manager of the hotel and had been employed in that capacity since 1948. The Licensee is the holder of Dining Lounge and Lounge Licences No. 010149.

On the 8th day of February, 1980, the Liquor Licence Board issued a Notice of Proposal to suspend for a period of thirty (30) days the Dining Lounge Licence and Lounge Licence issued in respect of the premises for the following reasons:

"On January 7th, 1980, Westminster Hotel Limited, the Licensee Corporation, pleaded guilty and was convicted of keeping a common bawdy house, contrary to the provisions of The Criminal Code. Lowell Dennis, an officer of the Licensee Corporation, pleaded guilty to permitting the premises to be used as a common bawdy house and was convicted in Provincial Court at Toronto. Neree Croisetiere, Manager of the licensed premises, pleaded guilty

to permitting the licensed premises to be used as a common bawdy house and was also convicted in Provincial Court.

Contrary to Section 6(1)(c)(ii) of the Act, the past conduct of certain officers and directors of the Licensee Corporation affords reasonable grounds for belief that its business has not and will not be carried on in accordance with law."

After a Hearing on March 27th, 1980, the Liquor Licence Board advised the parties that the Board's decision would be reserved pending further study, and that the decision would be rendered on or before May 9th, 1980.

Subsequently, as of April 2nd, 1980, the Board rendered the following decision:

"The Board has now considered this matter more thoroughly and is satisfied that the Licence Holder carried on activities contrary to the Liquor Licence Act, 1975, and Regulations"

and issued the following Order:

"The Board, therefore, "ORDERS" that the 'Dining Lounge' and 'Lounge' licences issued to Westminster Hotel, Toronto, be "SUSPENDED", effective at the opening hour on Monday, April 21st, 1980, and to continue until the opening hour on Thursday, May 1st, 1980."

At the commencement of the Tribunal Hearing, Counsel for the Board indicated that the sole issue to be decided was whether or not the above convictions "afford reasonable grounds for belief that its business will not be carried on in accordance with law..." - Section 6(1)(c)(ii) of the Liquor Licence Act. Certificates of Conviction dated January 7th, 1980, were introduced as Exhibits on consent. The convictions relate to charges against the Corporation and individuals as follows:

As against Westminster Hotel Limited:

"Unlawfully did keep a common bawdy house at Westminster Hotel, 240 Jarvis Street, contrary to The Criminal Code."

As against Lowell Melvin Dennis:

"being the Owner, Landlord, Lessor,

Tenant, Occupier, Agent or otherwise having charge or control of premises known as the Westminster Hotel, located at 240 Jarvis Street, knowingly permit the premises or any part thereof to be let or used for the purpose of a common bawdy house contrary to The Criminal Code."

As against Neree Joseph Croisetiere:
"being the Owner, Landlord, Lessor, Tenant, Occupier, Agent or otherwise having charge or control of premises known as the Westminster Hotel, located at 240 Jarvis Street, knowingly permit the premises or any part thereof to be let or used as a common bawdy house contrary to The Criminal Code."

The Certificates indicate that in each case a plea of Guilty was entered to each of the above charges.

Police Constable Howard Hunton of 51 Division, The Metropolitan Toronto Police Force, gave evidence of his familiarity with the operation of the Westminster Hotel, and testified that since February 5th, 1979, the premises had been under observation for known prostitutes in the area entering and leaving the hotel. After forty-five (45) hours of such observation and under a search warrant issued, on Saturday, March 17th, 1979, a police raid on the premises was carried out and seven females and six males were arrested, having admitted that their sole purpose in being in the premises was for sexual activities. The hotel's room rental records were seized and, in testimony, P. C. Hunton gave in detail information from these records disclosing the rental of a number of rooms in the hotel that particular evening, showing that certain rooms had been rented and re-rented several times during that evening. As a result of the aforementioned raid, Westminster Hotel Limited, the said Lowell Dennis and Neree Croisetiere were charged as aforesaid, pleaded guilty at a Hearing on January 7th, 1980, were convicted and assessed the fines noted in the certificates of conviction.

At the outset of his cross-examination of the above witness, Counsel for the Licensee submitted a request to the Tribunal, which was consented to by Counsel for the Board, that, despite the filing of the Licensee's Financial Statement for the year ending December 16th, 1979, the details of same be excluded from any evidence given at this Hearing, since this information was confidential and not relevant to the issue at hand. This request was granted. Mr. Crackower, Counsel for

the Licensee, elicited from the witness his agreement that the guilty pleas entered to the above charges and fines paid on conviction actually facilitated the reduction of the Provincial Court's time in considering the charges laid, the the Company's records were available in detail (unlike the situation existing in other such police raids) and that, since the said convictions, the Licensee has made extensive efforts to prevent any similar occurrence.

William R. McKay, an Inspector with the Liquor Licence Board for the past eight and one-half years, gave evidence under examination and cross-examination that he had known and frequented the Westminster Hotel since 1948 and had been an inspector of its operation for the past year. He indicated that there were no complaints against the operation of the hotel or its dining facilities, other than the above incident, and commented favourably on the general overall operation of these facilities, stressing that it had a good reputation in the Toronto area.

In his presentation to the Tribunal, Mr. Crackower, Counsel for the Licensee, stated that he had decided not to call the five witnesses who gave evidence at the Board Hearing of March 27th, 1980, since their evidence was contained in the Secretary's Minutes of the said Board Hearing. He referred the Tribunal to his appeal letter, dated May 20th, 1980, on behalf of the Westminster Hotel Limited, containing among other items a synopsis of the history of the Westminster Hotel, commencing January 1948, and a statement as to the grounds of appeal requesting the Tribunal's consideration of the following:

1. The offence in question was the first with which the Licensee was charged in over thirty years of business.
2. The offence in question was not a liquor or liquor-related offence.
3. No warning of the illegal behaviour was received by the Licensee from the Police Department despite the fact that they had on previous occasions received such warning, and despite the fact that they had on numerous occasions worked with the police, usually on their own initiative to rid the hotel of suspected or known criminals.
4. The Licensee had never previously appeared before the Board for any offence under the Liquor Licence Act.

5. The fact that steps have been taken and are being taken to:
 - (a) renovate the hotel in an effort to upgrade the clientele;
 - (b) employ undercover security personnel at their expense;
 - (c) tighten up their procedures to ensure any similar offence will not occur in the future.
6. The fact that the Licensee has already paid a heavy monetary penalty resulting from the convictions in Provincial Court
7. The inconvenience to the public which would result on any suspension of the Licensee's licence due to the fact that banquets and parties are booked several months in advance.
8. A loss of approximately two hundred jobs for the period of any suspension.

Mr. David Lockwood testified on behalf of the Licensee in his present capacity as Manager of the Westminster Hotel. He is thirty-five years of age, married with one child, and lives with them in the hotel premises. Formerly a bible college student and minister, manager of a group home in Oshawa, manager of The Fort York Hotel in Mississauga for approximately two-and-a-half years, Mr. Lockwood has been employed by the Licensee since April 28th, 1980. His wife acts as receptionist and secretary to the principal owners. This witness was hired by the hotel to upgrade every aspect of the facilities, to contend with the problems of drinking, rowdiness and undesirables prevalent in the area, and particularly to co-operate with the police in controlling these elements. He indicated in detail the more stringent measures now being taken, particularly with regard to the hotel's operation of its front desk staff. In his opinion the above problems have gradually improved, and he receives the utmost in co-operation from his employers.

Mr. Gordon Cooper, a former Staff Sargeant with The Metropolitan Toronto Police for thirty-one years, and now a part-time security officer with the Westminster Hotel since January 17th, 1980, testified that he had worked in, and was familiar with, the area for some twenty (20) years, and his main duties

consisted of discouraging known prostitutes from entering or attempting to use the premises. Since his hours of employment are flexible and no one is aware of when he is on duty, in his opinion the use of the premises for prostitution purposes has been eliminated. In commenting on the upgrading of, and changes to, the premises since March 1980, this witness outlined management's new policy of making accommodation available to immigrants arriving in the City, the recent and extensive alterations and renovations to the premises, and the replacement of old employees of the hotel with new staff, particularly with reference to the new manager.

Mr. Martin Dennis then gave evidence indicating that the Westminster Hotel Limited was a family-owned and family-managed business, and that his particular function was in the capacity of manager of Westminster Hotel Limited and Director of Administration. In some detail he referred to his education and qualifications for the above position, and particularly made reference to the history of the hotel as contained in the synopsis filed. Under examination he admitted that he and his family are principally restaurant people, and that as a result the hotel operation had become somewhat neglected. Evidence was submitted as to the location and function of the various banquet facilities within the hotel-restaurant complex, the dependence of the operation on banquet and party bookings, the gross revenue from the sale of liquor as it applies to the various rooms and eating establishments covered by the present licence, and the hotel's convention facilities and policy together with the hotel's catering to its government commitment of accommodation for groups of immigrants arriving in Toronto.

Dealing with the aforesaid convictions, Mr. Dennis indicated that immediately after these problems had arisen the Dennis family concluded that a completely new operation was required, including new management, major renovations to the hotel's premises, and the hiring of a family-oriented manager. Hence the employment of Mr. Lockwood as manager and building superintendent.

In summation, Counsel for the Board submitted to the Tribunal his opinion that the facts of this case were not in dispute, that the Licensee's past conduct came strictly within the ambit of Section 6(1)(c)(ii) of the Liquor Licence Act, the sole issue being as to the matter of the penalty to be imposed. The original proposal of the Board was for a thirty (30) day suspension, which, after the Board's Hearing, was reduced in its decision to one of ten (10) days.

Counsel for the Licensee referred the Tribunal again to the Secretary's Minutes of the Board Hearing which recorded the evidence of Messrs. George Cummings, George Elliott, and Bernard Simmonds, and also to the grounds of Appeal mentioned above. An alternative argument was proposed that, since nine different locations would be affected, if there has to be any licence suspension, it should be limited to one location only. In this regard Counsel referred the Tribunal to Volume II of the Tribunal's Summaries of Decisions and to the cases of Brockdan Motor Hotel, President Motor Hotel, and the Peter Piper Hotel, where in each incident the Board's decision was altered and the suspension confined to one location within the premises concerned. Each of these cases dealt with convictions of minors being permitted to use the liquor facilities. Reference was also made to Volume I of the said Summaries and The Oasis Steak House Tavern case also involving minors, where the Board's suspension was revoked. In the light of the above, Counsel therefore urged the Tribunal that in the present situation leniency should be extended.

Based on the evidence submitted as contained in the testimony of the various witnesses appearing not only before the Tribunal but at the previous Hearing of the Liquor Licence Board, and considering carefully the Counsels' submissions, the Tribunal is of the view that the Licensee is in contravention of Section 6(1)(c)(ii) of the Act stated as follows:

"The past conduct of its officers or directors or of a shareholder who owns or controls ten percent (10%) or more of its issued and outstanding equity shares as determined under Section 20 affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty."

In rendering this Decision the Tribunal is cognizant of the grounds of appeal submitted by Counsel for the Licensee, but is also aware of the heavy onus placed on all licence holders, including this Licensee, to at all times maintain their premises free of any incidents such as have been related above.

As to mitigation of the Board's original proposal of a thirty (30) day suspension, the Tribunal is of the opinion that this consideration was given the Licensee when the Boards' decision of April 2nd, 1980, reduced to ten (10) days the suspension proposed.

The Tribunal therefore confirms the decision of the Liquor Licence Board dated April 2nd, 1980, and directs the Board to set the exact period of suspension. *

*Note: The above decision was appealed to the Supreme Court of Ontario (Divisional Court). The appeal had not been concluded at the time of this publication.

WESTPORT HOTEL, Westport

Application for Dining Lounge and Lounge
Licences by L.O. Harris Holdings Limited
APPEAL FROM REFUSAL TO ISSUE

TRIBUNAL: GORDON I. PURVIS, Q.C., CHAIRMAN
JACK C. SIM and
BARBARA J. SHAND, MEMBERS

COUNSEL: ROBERT A. BARR, Q.C. representing the Applicant
S.A. GRANNUM representing the Liquor Licence Board

DECISION: JUNE 10, 1980

The Liquor Licence Board after a Hearing issued a decision on November 29, 1979, refusing the issuance of liquor licences for the Westport Hotel based on the reasons given in the Notice of Proposal bearing date September 11, 1979, namely,

(a) the issuance of a liquor licence is not in the public interest having regard to the needs and wishes of the residents of the municipality;

(b) the past conduct of the Applicant affords reasonable grounds for belief that its business will not be carried on in accordance with the law.

For the record the Tribunal wishes to establish at the outset, and Counsel for the Board agreed, that the Board's reason (b) above relating to the past conduct of the Applicant, would not be a contentious issue nor a reason for refusing the issuance of liquor licences. On the contrary the Tribunal was impressed by the sincerity of the Applicant's submission and is prepared to base its decision solely on reason (a), the issuance of a liquor licence is not in the public interest having regard to the needs and wishes of the residents of the municipality.

The Westport Hotel premises is located in a three-storey building situated in the centre of a residential area directly across the road from the municipal recreation area, including the community centre, and the hotel's property is in close proximity to four churches, actually abutting the property of one of these churches. It is located in the Town of Westport, having a population of approximately 680 persons. Since Westport is a resort centre, in the summer time the population is considerably increased by tourists and visitors to the area.

The hotel has a capacity of 85 persons with 17 bedrooms but requires a considerable amount of renovation and work to be done since it has remained dormant since the early 1970's.

Notice of this Hearing appeared in the Westport Mirror as of April 30, 1980, and various letters and petitions objecting to or in support of the issuance of licences were received by the Tribunal.

Evidence was received that there are already sufficient outlets for alcoholic beverages in the Village of Westport and, since the Village has had in the immediate past alcohol-related problems, a strong concern was expressed that if these licences were granted the Village would experience a considerable increase in these drinking problems, including over-indulgence by some adults, teenage drinking, disturbances on the street, noise, particularly on the weekends, and driving under the influence of liquor, all of which the Village has recently experienced.

Although recognition must be taken by the Tribunal that the Town Council voted three-two to approve renovation of the hotel property and in so doing indicated approval of the present Application the Tribunal does not consider that this represents strongly the needs and wishes of the municipality as a whole.

At the Board Hearing those favouring the Application were then well represented by petitions and oral testimony. However, at the Tribunal Hearing, although a proper notice of this Hearing had been published in a local newspaper, the Tribunal was concerned by the lack of material support for the Application.

The Tribunal heard considerable evidence from those in opposition, including particularly the Westport-Newboro Ministerial Association, and a number of members of this Association gave evidence.

The Tribunal makes reference to its decision in the matter of Pros Restaurant, Scarborough, rendered on January 12, 1979, and reported in Volume 2 of the Summaries of Decisions on Page 148, more particularly at pages 155 and 156.

The Tribunal agrees with this decision and orders that the decision of the Liquor Licence Board to refuse to issue Liquor Licences to the Applicant be confirmed on the grounds that the issuance of licences is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located.

WILLY'S RESTAURANT, OTTAWA

Dining Lounge Licence issued to
 Willey's Tavern Limited
 APPEAL FROM ORDER ATTACHING TERMS AND CONDITIONS

TRIBUNAL: J. W. ERICKSON, Q.C., VICE-CHAIRMAN AS CHAIRMAN
 JACK C. SIM and
 BARBARA SHAND, MEMBERS

COUNSEL: S. A. GRANNUM representing the Liquor Licence Board

AGENT: HUGH D. J. RYAN, acting on behalf of Willy's
 Restaurant

DECISION: JANUARY 18, 1980

Willy's Tavern Limited is the owner and Licensee of premises located at 356 MacLaren Street in the City of Ottawa; the premises are managed by Patricia Wilgress who is also the owner of all of the shares of the limited company.

On the 24th day of May, 1979 the Board issued a Notice of Proposal to the Licensee as follows:

"TAKE NOTICE that pursuant to The Liquor Licence Act S.O. 1975, C. 40, Sec. 10, the Liquor Licence Board proposes to attach to the Dining Lounge Licence for the above-named establishment a TERM and CONDITION that the sale and service of liquor in the establishment shall cease at 10:00 p.m.

FOR THE FOLLOWING REASONS:

The licensee is carrying on activities that are in contravention of Section 6, subsection (5) of Regulation 1008/75 under The Liquor Licence Act 1975 and in particular, the total receipts from the sale of liquor in the dining lounge have exceeded the total receipts from the sale of food in each month during the period commencing October, 1978 and ending April 30, 1979.

The licence holder has filed with the Board a statement of gross sales of food and liquor as follows:

<u>Month & Year</u>	<u>Total Food</u> <u>Receipts</u>	<u>%</u>	<u>Total Liquor</u> <u>Receipts</u>	<u>%</u>
October 1978	(no statements filed)			
November 1978	(no statements filed)			
December 1978	\$ 8,428.00	34	\$16,643.00	66
January 1979	(no statements filed)			
February 1979	11,848.84	43	15,388.53	57
March 1979	13,411.37	44	17,378.99	56
April 1979	9,595.81	42	13,453.96	58"

A hearing was held by the Board on the 26th day of July, 1979, and the Decision of the Board was as follows:

"Effective October 1st, 1979, a Term and Condition is applied whereby the sale and service of liquor at Willy's Restaurant shall cease at ten (10) p.m. daily until such time as the food and liquor sales are to the satisfaction of the Board in conformity with Section 6 Subsection (5) of the Regulations."

By letter dated September 20th, 1979 the Board issued a Stay of its Order pending further investigations it intended to carry on.

On the 22nd day of November, 1979 the Board issued a further Order following a hearing as follows:

"THEREFORE, commencing WEDNESDAY, JANUARY 2nd, 1980 the 'TERM and CONDITION' is that the sale and service of alcoholic beverages in the 'Dining Lounge' of Willy's Restaurant shall CEASE at 10:00 p.m. daily until such time as the food and liquor sales are to the satisfaction of the Board in conformity with Section 6, Subsection (5) of the Regulations."

At the hearing before the Tribunal the Tribunal was provided with a summary of the gross receipts from the sale of food and liquor for the months December, 1978 to October, 1979. These figures were filed on consent and clearly indicate that compliance with Section 6(5) of the Regulations was not achieved in any one month during the period in question.

Evidence was led by the Board which consisted of the reports of S. J. Napolitano and S. Holubko who are Investigators with the Liquor Licence Board of Ontario and further the evidence of Inspector Lorne Hooper. It is not necessary to go into detail with respect to their evidence with respect to the liquor and food sold in the licensed premises since that does not appear to be in dispute.

The evidence did indicate that the premises consist of a three-floor house. The first floor contains four rooms used as a Dining Lounge, the second floor contains three rooms used as a Dining Lounge, the third floor contained an office. There was agreement that the premises were kept in a tidy condition and that the kitchen facilities were clean, adequate and well stocked with food. All of the witnesses called by the Board indicated that the management was co-operative at all times and by inference the Tribunal also concludes that the premises were managed in an efficient manner.

Ms. Patricia Wilgress gave evidence that she was the owner of all of the shares of Willy's Tavern Limited and the manager of the premises. She did file figures which were described as unaudited for the month of November, 1979 which she indicates showed compliance with the Act for that month. The Tribunal after questioning Ms. Wilgress noted her uncertainty with respect to the reliability of the figures and further notes that no serious attempt was made to persuade the Tribunal that compliance had in fact been achieved in November and December of 1979. The Tribunal infers that this was not the case because the Licensee did have the opportunity to provide this information to us but did not do so.

Ms. Wilgress indicated that she had made a substantial investment in the premises and was attempting to sell her business in all likelihood, at a substantial loss. She also indicates that her concept of a wine bar for all intents and purposes had failed and any prospective purchasers did not intend to carry on the same business but intended to change the format to a traditional restaurant not specializing in wine. Ms. Wilgress indicated that she felt her venture had failed because of unanticipated increases in the price of wine by the Liquor Control Board of Ontario.

The evidence in total indicates that while there is a bona fide restaurant operation being carried on by Willy's there appears to be very little chance of reasonable success in achieving compliance with Section 6(5) of the Regulations even though the Tribunal is satisfied that Ms. Wilgress has tried to combat the problem. Ms. Wilgress in her evidence left the clear and distinct impression that she would not be able to achieve compliance. The Tribunal further notes that the Board granted a Stay to Ms. Wilgress after its original decision in an effort to assist her but that she was unable to achieve compliance notwithstanding that assistance.

After hearing the evidence and the submissions of Counsel, the Tribunal orders:

1. That the Order of the Board dated the 22nd day of November, A.D., 1979 be confirmed provided that the Board shall in its discretion establish the commencement date for the term and condition referred to in the Order.

2. The Tribunal directs the Board to consider any prospective purchaser on its merits at the time of application for the transfer of the licence in order to determine if the term and condition attached to the licence shall be removed unless the Licensee has previously achieved compliance.

WOODSHED RESTAURANT AND TAVERN

Dining Lounge Licence
issued to
Pachis Holdings Ltd.
APPEAL FROM ORDER SUSPENDING LICENCE

TRIBUNAL: JOHN YAREMKO, Q.C., CHAIRMAN
JACK C. SIM, and
GALE MCAULEY, MEMBERS

COUNSEL R.I. SMITH representing the Licensee
S.A. GRANNUM representing the Liquor Licence
Board

DECISION: June 23, 1980

Pachis Holdings Ltd. is the Licensee of premises
classified as a dining lounge known as Woodshed Restaurant
and Tavern, 1620 Albion Road, Etobicoke.

The Licence issued is a :

Dining Lounge Licence,
Serial Number 020367
in respect of three rooms:

- (1) Main floor - East Section
(seating capacity - 108)
- (2) Main floor - West Centre Section
(seating capacity - 43)
- (3) Main floor - Northwest Section
(seating capacity - 22)

At the conclusion of the hearing the Chairman gave the
decision of the Tribunal orally.

The Tribunal finds that on the 4th day of October
1979 one Ian Bruce MacDiarmid born the 24th of November 1962
was observed consuming beer in Room #1. On the same occasion
it was observed that a waitress Caroline Kaiser served MacDiarmid
with additional beer without asking or obtaining evidence at

that time as to the age of Ian MacDiarmid. The birthday of the 24th of November 1962 as of October 4, 1979 indicates an age just short of 17 years of age, slightly more than two years less than the prescribed age. The Tribunal finds that the only check on that date with respect to age by Caroline Kaiser was an enquiry by her of one of the officers of the licensee on duty as to a person and he had indicated that he had checked the person. There is nothing before the Tribunal to indicate that the person checked was MacDiarmid.

The relevant section of the regulations set out under the title of 'Terms and Conditions of a licence', is Section 5, subsection (5a), paragraph (b) which reads:

"The holder of a licence shall ensure that evidence as to the age of the person, satisfactory to the licence holder, is obtained..... prior to serving liquor to a person apparently under the age of 19 years on any premises prescribed by Section 46."

A dining lounge is one of the premises prescribed by Section 46.

The Tribunal notes that of some 50 or more persons in Room #1 at the time, the investigating officer had checked the age of one person and that person had turned out to be under the permitted age. The Tribunal therefore finds that MacDiarmid was someone who apparently was under the age of 19 years.

The Tribunal finds that in the operation of the business there were procedures with respect to age checks. There was a sign in the foyer. There was control at times at entry, and by direction of those who appeared to be under age to a room other than that in respect of which the incident referred to occurred. Staff are instructed to make checks. The Tribunal finds that the procedures which were in effect in this regard were minimal. Anything less than what was prescribed by management would have been no check at all. In the present instance the procedures were not effective. The waitress, Caroline Kaiser, was forthright in her testimony and the Tribunal has found that she made no direct check herself in respect to requesting and obtaining evidence prior to service on that date.

The Tribunal makes two observations, firstly that the service of liquor to under aged persons is a very serious occurrence. The seriousness of that offence must by the time of October 4th, 1979 have been apparent to all licensees. There had been much discussion in the previous year with respect to minors drinking, and the change from 18 to 19 years highlighted the seriousness of the matter. The second observation is that by the 4th of October, 1979 the importance that identification cards issued by the Board be relied upon was something that ought to have been known by all licensees. This is especially important when it related to those under the age of 19 who are permitted to be in a dining lounge. The Tribunal is of the opinion that the action to be taken prior to the service of liquor is something which must be done at the time of service in addition to any other check at the time of entrance. The section requires that "the holder of a licence shall ensure that evidence..... is obtained". The Tribunal finds that the procedures followed were not reasonable under the circumstances to comply with the direction of the regulation.

The Tribunal notes that this was the first instance of discipline with respect to the holder of the licence and the Tribunal notes that in all other respects the operation of the establishment was satisfactory. Actions taken on behalf of the holder of the licence in respect to menu and entertainment indicated a desire to have an establishment in accordance with the requirements and statutes of the regulations. The Tribunal notes that the procedures which are now in effect subsequent to the incident are more stringent and the Tribunal is of the opinion that they at least should have been in effect at the time of the incident.

A procedure which permits a waitress to rely on what may be taken to be a fairly indirect statement by someone else, is done on behalf of the holder of the licence at peril. Accordingly, the Tribunal finds that the holder of the licence herein by reason of the action of its officer and employee was in breach of the Term and Condition set out in Section 5, (5a), paragraph (b).

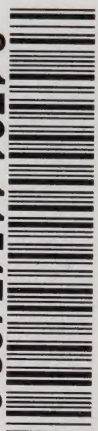
Counsel for the licensee referred to the difficulty that the licensee is in by reason of the fact that the breach was brought to management's attention subsequent to the event.

Though the Tribunal is sympathetic to the licensee in this regard, the Tribunal believes that the procedures undertaken by the licensee should be those of prevention.

The counsel for the licensee made reference to the penalty that he described as harsh. He cited the matter of the Oasis Tavern reported in 1 LLAT. The Tribunal in that instance found that the licensees had already suffered a penalty in that they had been refused a licence by reason of the breach, and that a suspension would have been a second penalty. The Tribunal does not believe that the procedures which have to be carried out in respect of action by the Board can be construed as a penalty because those procedures of necessity must take place in all instances of disciplinary action initiated by the Board. The Tribunal notes that in this instance the Board issued a Notice of Proposal to suspend for seven days, and then subsequent to the hearing the Board reduced the penalty to four days. It must be taken that the Board did give consideration to the penalty being imposed.

The Tribunal hereby confirms the decision of the Board and directs the Board to set the commencement of the period of the suspension, bearing in mind any secondary penalties that might follow if the period does not take into consideration all of the relevant matters.

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